IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Alex Gonzales, Sr., and Elizabeth Herrera, *Plaintiffs*, v. City of Austin, *Defendant*.	§ § § § § § §	Case No. 1:22-cv-655

PLAINTIFFS' ORIGINAL COMPLAINT AND REQUEST FOR JURY TRIAL

To the Honorable Court:

1. This is a lawsuit about Austin police officers Luis Serrato and Gabriel Gutierrez who fatally shot Alex Gonzales, Jr. ("Alex") on January 5, 2021, and about the policies and practices of the City of Austin that caused Alex's tragic and untimely death.

2. Alex's parents, Alex Gonzales, Sr., and Elizabeth Herrera (collectively the "Plaintiffs") bring this lawsuit to vindicate their son's civil rights, hold the Austin Police Department accountable for their son's senseless killing, and recover for their own harm and damage from losing their only son to excessive, unjustified police violence.

I. Parties

3. Alex Gonzales, Sr. is a citizen of Texas and a resident of Bastrop County, Texas. His son, Alex Gonzales, Jr, also was from Bastrop County, Texas. As Alex Gonzales, Jr.'s biological father, Plaintiff Alex Gonzales, Sr. is a wrongful death beneficiary and, as such, brings this wrongful death action in his individual capacity pursuant to Texas Civil Practice and Remedies Code section 71.004(b) and 42 U.S.C. §§1983, 1988.

4. Elizabeth Herrera (also known as Elizabeth Gonzales) is a citizen of Texas and a resident of Bastrop County, Texas. Her son, Alex Gonzales, Jr, was also from Bastrop County, Texas. As Alex Gonzales, Jr.'s biological mother, Plaintiff Elizabeth Herrera is a wrongful death

beneficiary and, as such, brings this wrongful death action in her individual capacity pursuant to Texas Civil Practice and Remedies Code section 71.004(b) and 42 U.S.C. §§1983, 1988.

5. Defendant City of Austin (herein the "City" or "Austin") is a Texas municipal corporation in the Western District of Texas which funds and operates the Austin Police Department ("APD") and the APD Training Academy.

II. Jurisdiction

6. This Court has federal question subject matter jurisdiction over this 42 U.S.C. §1983 lawsuit under 28 U.S.C. §§1331, 1343.

7. The City is subject to general personal jurisdiction because it is a Texas municipality.

8. This Court has specific personal jurisdiction over the City because this case involves its conduct that occurred in Austin, Texas.

III. Venue

9. Under 28 U.S.C. §1391(b), the Western District of Texas is the correct venue for this lawsuit because the events occurred in Austin, Texas.

IV. Factual Allegations

A. Officers Gutierrez and Serrato shot and killed Alex Gonzales, Jr. without provocation or justification.

10. In the early morning hours of January 5, 2021, Alex Gonzales, Jr. ("Alex") was driving with his girlfriend, Jessica Arellano ("Arellano"), in the passenger seat and with their two-month-old baby, Zayne Alexander Gonzales, in the backseat. They encountered Gabriel Gutierrez ("Gutierrez"), an off-duty Austin Police Officer, on the road in his personal vehicle.

11. Gutierrez used his car to cut-off Alex's car. Gutierrez's aggressive driving initiated a confrontation with Alex. Gutierrez then turned from E. Oltorf Street and headed southwest on

Wickersham Lane, a two-lane residential road. Gutierrez stopped in the right lane of Wickersham, baiting Alex and escalating the events.

12. Alex pulled his vehicle next to Gutierrez's vehicle and stopped to the left of the vehicle. Unprovoked and without any warning, Gutierrez, at close range, rapidly fired multiple shots into the passenger side of Alex's vehicle, where the young mother and her baby sat. Upon information and belief, Gutierrez fired at least six (6) shots into Alex's vehicle. Gutierrez shot Alex in the head and Arellano in the torso. Alex, now severely wounded and in a state of shock and fear, maneuvered the vehicle to get away from the gun fire and crashed on the right-hand curb a short distance ahead.

13. At no point during this series of events did Alex flash a gun or take any other aggressive action that would justify Gutierrez's use of lethal force.

14. Gutierrez was not in a police vehicle. He was not wearing police clothes. Alex had no reason to know or suspect that Gutierrez was an off-duty APD police officer. Alex had not harmed or threatened anyone. There was no objectively reasonable basis for Gutierrez to be afraid for himself or others. No reasonable police officer would have used deadly force against Alex in these circumstances.

15. Gutierrez was the aggressor in his encounter with Alex. Gutierrez's actions created the initial confrontation and escalated the events that ensued.

16. After firing at least six shots into Alex's vehicle, shooting Alex and his passenger, Officer Gutierrez called 911 at approximately 12:33 AM. Gutierrez told the 911 dispatch that: (1) Alex had cut him off, (2) that he (Gutierrez) had been involved in a "road rage" incident, and (3) Alex had pointed a gun at him. Each of these statements was untrue.

17. The transcript of the first part of the 911 call reads as follows:

911 Operator: Austin 911,

do you need police, fire, or ambulance?

Officer Gutierrez: Hey, off duty – off duty APD AP 8063.

I have shots fired.

2400 Wickersham Lane.

911 Operator: 2400 Wickersham Lane?

Officer Gutierrez: Yes, sir.

911 Operator: Okay, how many did you hear?

Officer Gutierrez: Uh, what's that?

911 Operator: How many was there?

Officer Gutierrez: I have a – a victim – the driver –

The, uh, other vehicle, he has a gun.

I'm not – I'm not shot. I need EMS over here.

911 Operator: I'm bringing them on.

Ambulance, what's the address of your emergency?

2400 Wickersham Lane.

Ambulance, what's the address of your emergency?

911 Operator: EMS, it's an off-duty officer,

he is at 2400 Wickersham Lane.

Officer Gutierrez: Police.

Ambulance: You said 2500 Wickersham?

Officer Gutierrez: Get the (unintelligible) down.

911 Operator: 2400 at the High Point Apartments.

Officer Gutierrez: And it – it – no – no, I'm sorry,

2500 Wickersham Lane – 2500 in the street.

Hey, drop your gun.

Austin Police. He's moving.

He's got a gun in his hand.

911 Operator: Okay, we're gonna – we're gonna stage for officers to…

Officer Gutierrez: No, don't stage.

I'm APD, I – he's got a gun in his hand.

I need officers now.

911 Operator: Yeah, okay.

Officer Gutierrez: I'm an Austin Police Officer.

911 Operator: APD is on the way.

Um, EMS is going to stage.

Officer Gutierrez: Yeah – yeah, EMS needs to stage.

911 Operator: Okay

Officer Gutierrez: Austin Police.

Put your gun down, man.

Let me see your hands.

Hands up, man. EMS is coming.

Put your hands up. Hey, hands up, man.

He's hanging out the door.

He had a gun in his hand.

There's a passenger.

She's lying on the ground – female passenger.

911 Operator: Okay, so tell me exactly what happened.

Officer Gutierrez: Um, it was a road rage incident.

I was driving and he cut me off,

and he pointed a gun at me.

911 Operator: Okay, is anybody injured?

Officer Gutierrez: Yes, the – the driver of the other vehicle.

He's shot. Put your gun down.

Austin Police, put your gun down.

Don't make me shoot you again, man.

It's the police.

I don't know if the – I don't know if the passenger's shot or not.

She's lying on the ground.

Operator: Okay, that – that's all right.

We do have APD Dispatch on the line

Did y'all want Fire [resources][sic] as well?

Officer Gutierrez: All right, my – my –

Yes, sir, my AP's 8063.

8063.

Hey, just keep your hands up, man.

Lie on the ground and keep your hands up.

Woman: (Unintelligible).

Officer Gutierrez: *Okay, the – the female passenger,*

she's lying on the ground.

She's saying, "My baby – my baby – my baby."

The driver, he's standing.

He's got blood all over his face.

He's standing.

I don't know if he's still got the gun in his hand or not.

911 Operator: *Okay, is there a baby involved, or*

Is she pregnant, do we not know?

Officer Gutierrez: *I have no idea, I don't know –*

I have no idea.

911 Operator: Okay.

Officer Gutierrez: *She's just saying, "My baby."*

I'm – I'm not approaching the vehicle.

I'm standing by – behind my vehicle.

911 Operator: I – I totally understand. Um…

Officer Gutierrez: All right, there's units coming

Right now – there's units coming right now.

911 Operator: Do you know – do you know if he's awake and breathing?

Officer Gutierrez: Uh, yeah, he's standing up right now.

911 Operator: Okay.

Officer Gutierrez: All right, put your gun down, man.

It's the police.

Our units are here, can I – can I disconnect?

911 Operator: Um, yeah, I will let you go.

Officer Gutierrez: Don't reach in your pocket –

don't reach in your pocket.

Do not reach in your pocket.

18. After Alex's vehicle landed partially on the curb, Gutierrez parked his vehicle behind Alex's vehicle. Gutierrez got out of his car and continued his conversation with 911 dispatch.

19. Arellano, who had been shot in the torso, crawled out of the vehicle onto the ground. She repeatedly cried: "My baby! My baby!"

20. Alex got out of his car, stayed by the driver's door, and tried to put his hands up. However, Alex's gunshot wound compromised his physical and mental functions, and his comprehension.

21. Gutierrez knew there was an infant in the passenger side of the car. He knew the mother was crying out for the baby, and that she was concerned the baby was injured. Gutierrez knew two people were badly injured, with a baby who also might be injured.

22. Defendant Gutierrez did not render aid. As time passed, Gutierrez simply stood by.

23. In an instant, Alex went from driving along a city street with his girlfriend and baby to having the macabre experience of a stranger shooting repeatedly with an automatic handgun into his car. Alex knew only that he had been shot in the head and his girlfriend had been shot and was bleeding on the ground. At this time, Alex did not know whether his son had been shot or injured.

24. Bystanders watched in horror from a nearby balcony, recording the events and calling 911. One bystander said: "Dude, that was like six shots right there."

25. Additional officers arrived, including Officer Serrato ("Serrato"), and approached the scene. Serrato and another uniformed Austin Police Officer held Alex at gun point. None of the responding officers render aid to Alex or Arellano, both of whom were obviously severely injured. Instead, the officers began shouting multiple, conflicting commands at Alex and Arellano.

26. Because Alex had been shot inside a vehicle at close range his hearing was impaired, making it difficult for him to hear the commands of the officers. Alex also was in shock, unable to comprehend or process what was happening and why officers were yelling at him when he was the victim of a shooting. Alex tried to speak to the officers, but his words were indecipherable given his impaired condition after being shot by Gutierrez.

27. The officers yelled at Alex to put his hands up. Alex kept his hands up, resting against the open car door. There was no weapon in Alex's hands. Alex had difficulty standing.

28. When no one came to his aid, Alex began stumbling toward the passenger side of the car, toward his girlfriend and child. Due to the gunshot wounds to the head, he had difficulty walking and had to use the car to hold himself up. Disoriented, Alex touched his head wound and then looked at the blood on his hands, as if trying to comprehend what had happened. Alex

followed the rear of the car towards the passenger side, wounded and needing to steady himself with his hands on the vehicle. Still, no one came to his aid.

29. At all times, Alex's hands were in plain sight of officers. The officers could plainly see he had no weapon. The officers could see that Alex was attempting to check on the welfare of his baby son.

30. Alex reached the passenger side of the vehicle. Arellano continued to beg him to help their child.

31. Alex slowly turned to reach the rear passenger door. He made no sudden movements. He did not look at the officers or threaten them in any way. He did not confront the officers.

32. Alex opened the rear passenger door and, with his back to the officers, bent down toward his son who was in the car seat, visible from the back of the vehicle.

33. The officers knew two people had been shot and were seriously injured. The officers knew the mother was repeatedly begging for someone to help her baby. The officers knew there was a baby in the car. The officers could plainly see that Alex was attempting to check on the welfare of his child.

34. Without any justification, Serrato opened fire. Serrato fired at least ten shots, killing Alex. As a result of the shots fired by Officer Serrato, Alex fell dead and slumped in a heap. Alex was unarmed, mere inches away from his infant son.

35. At no point did Officer Serrato see a weapon in Alex's possession.

36. At no point did Alex make any aggressive move towards Serrato or any of the other officers on the scene.

37. At no point did Alex take any action that would have provided any indication that he posed a danger to any officer or any bystander at the scene.

38. No objectively reasonable basis existed to believe that Alex had harmed or posed a threat to harm anyone. No reasonable police officer would have used deadly force against Alex, or any other citizen, in these circumstances.

B. Through its policies, practices, and customs, Austin trained its police officers to adopt a paramilitary culture that caused them to adopt a "warrior mindset" and an "us versus them" approach to policing that permitted, encouraged, and tolerated excessive force.

39. For many years prior to the fatal shooting of Alex Gonzales, Jr., the City of Austin trained its police officers in ways that expressly and implicitly encouraged and approved of the use of excessive force in policing encounters with Austin residents. The Austin Police Department Training Academy used a training curriculum centered upon "paramilitary" training techniques that taught and reinforced a "paramilitary culture" throughout the APD. The APD Training Academy taught the officers to adopt a "warrior mindset" that encouraged an "us versus them" approach to citizen encounters during policing.

40. On May 22, 2020, Dr. Sara Villanueva delivered to then-Chief Brian Manley a Review Analysis and Strategic Plan of the Austin Police Department Training Academy (the "Villanueva Report"). At that time, Dr. Villanueva was the Organizational Development and Training Manager at the Austin Police Department. A copy of the Villanueva Report is attached to this complaint as Exhibit A, and it is incorporated herein by reference. On information and belief, Dr. Villanueva prepared and delivered her report within the scope of her authority as an employee and agent of the City of Austin.

41. After conducting a thorough "SWOT analysis" (assessing strengths, weaknesses, opportunities, and threats) of the APD Training Academy, Dr. Villanueva reported the following findings:

a. "[The] APD Training Academy operates under a paramilitary training format . . ." (Exhibit A, page 7 of 18);

b. "There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-police services model. A growing body of research has shown that paramilitary-structured academies do not align well with the principles of community policing and problem solving which are based on collaborations and partnerships." (Exhibit A, page 7 of 18);

c. "The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime." (Exhibit A, page 10 of 18); and

d. "The warrior mindset, and the fear that drives it, must change." (Exhibit A, page 10 of 18).

42. Each of the above-quoted findings from the Villanueva Report was true.

43. On December 29, 2020, Austin Chief Equity Officer Brion Oaks delivered a memorandum (herein the "Oaks Memorandum") to the Austin Mayor and City Council (via Nuria Rivera-Vandermyde) for the purpose of "provid[ing] a brief overview of two bodies of work documenting racial inequities within the Austin Police Department (APD)." (Exhibit B, page 1 of 152) The first body of work was a series of evaluations prepared by a third-party evaluator, The Peace Mill Research and Communications (herein the "Peace Mill Evaluations"). (Exhibit B,

pages 4-107 of 152) The second body of work was a report prepared third-party evaluator Joyce James Consulting (herein the "Joyce James Report"). (Exhibit B, pages 108-152 of 152) The Peace Mill Evaluations and the Joyce James Report each were prepared at the direction and authorization of the Austin City Council. The Oaks Memorandum was prepared and delivered within the scope of Brion Oaks authority as an employee of the City of Austin. A copy of the Oaks Memorandum, including copies of the Peace Mill Evaluations and the Joyce James Report, is attached to this complaint as Exhibit B, and they are incorporated herein by reference.

44. The Peace Mill Evaluation of the APD Training and Recruiting Divisions reported the following findings:

a. "Multiple former cadets expressed concerns that training division staff foster a culture of violence, embracing brutality over wisdom throughout the academy experience. . . . Multiple former cadets allege that *the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation*." (Exhibit B, pages 18–19 of 152, emphasis added);

b. "The term *culture of violence* describes institutionally imposed conditions that 'can be used to justify or legitimize direct or structural violence.' . . . [T]he qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied [for the APD Training Academy]." (Exhibit B, page 18 of 152, footnote 8, emphasis in original); and

c. "According to interview respondents, many of the academy's trainers rely overwhelmingly on 'violent', 'brutal', 'traumatizing' practices designed to

'manufacture soldiers' rather than produce community-driven law enforcement professionals adept at de-escalation." (Exhibit B, page 20 of 152).

45. Each of the above-quoted findings from the Peace Mill Evaluation was true.

46. On January 18, 2021, a panel of Austin community members delivered a Community Report that provided a comprehensive assessment of training videos used in the training curriculum of the APD Training Academy. A copy of the report is attached to this complaint as Exhibit C, and it is incorporated herein by reference. The Community Report was prepared with the authorization of the Austin City Council pursuant to Council Resolution No. 20191205-066 dated December 5, 2019 (attached to this Complaint as Exhibit F).

47. The Community Report provides an assessment of videos and training materials that had been in use within the APD Training Academy for many years prior to the shooting of Alex Gonzales, Jr. The Community Report states that "[t]he videos we reviewed were chosen by leadership from the Austin Police Department and the Office of Police Oversight." (Exhibit C, page 3 of 26).

48. The Community Report stated the following findings:

a. "Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed." (Exhibit C, page 6 of 26);

b. "One of the more pervasive biases we observed is the us-versus-them mindset. This bias existed at a fundamental, pervasive level, further informing other biases with respect to race, ethnicity, gender, and ability, and affected officers

of color and female officers in the same or similar ways as White male officers." (Exhibit C, page 14 of 26);

c. "The us-versus-them bias was explicit in some of the videos—i.e. police work is 'the deadly game of cops and robbers'; however, much of it was implicit. This bias was manifested in the following ways:

- An enhanced focus on officer safety over the safety of the community as a whole,
- A 'warrior' versus 'service' mentality in which officers see themselves as the 'good guys' and the public they interact with as 'bad guys,'

. . .

- Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled."

(Exhibit C, pages 14-15 of 26);

d. "Primarily this bias manifested in a focus on police officers 'winning' by overcoming resistance and threat from the community or by prevailing in court or in grievance and complaint hearings. . . . The focus turns from compassion to conquest as officers see community as a roadblock in their effort to control and 'win.' In the end, communities will continue to suffer, as there is no viable way to 'win' – not only against police officers, but also against the system that continues to protect police officers in this us-versus-them framework." (Exhibit C, page 15 of 26);

e. "We also observed evidence of the growing militarization of policing in the videos. . . . Many police organizations actively propagate the idea that our cities are a kind of 'war zone' rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of 'bad actors' which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy." (Exhibit C, page 15 of 26);

f. "Connected to both increasing militarism and the us-versus-them dichotomy, which we believe is at the heart of the repeated instances of police overreactions to threat and use of excessive force, is what researchers have called the 'danger imperative'—a belief in a constant and prevalent danger for police officers. . . . Several of the descriptions of the training materials in use at the APD academy state this plainly." (Exhibit C, page 16 of 26);

g. "[O]fficers are trained to view every encounter as potentially life-threatening." (Exhibit C, page 17 of 26);

h. "One of the training officers acknowledged that there has been an overemphasis on an officer 'going home at the end of the shift' for some time in policing and police training. The training we viewed, particularly the training highlighting the danger imperative, definitely emphasized the safety of the officer above all else." (Exhibit C, page 17 of 26); and

i. "From what we observed in videos and with conversations with instructors, we contend that the structure of policing as a whole, particularly the focus on control and the warrior mentality, reinforces the us-versus-them dichotomy in

ways that tend toward escalation and grievous mistakes in judgment." (Exhibit C, page 18 of 26).

49. Each of the above-quoted findings from the Community Report was true.

50. On February 26, 2021, third-party consultant Kroll Associates, Inc. delivered to the City of Austin (via Director of Austin Office of Police Oversight Farah Muscadin and Deputy City Manager Nuria Rivera-Vandermyde) a Memorandum regarding Kroll's Preliminary Assessment of the Austin Police Training Academy (herein the "Kroll Preliminary Assessment"). The Kroll Preliminary Assessment is attached to this complaint as Exhibit D and is incorporated herein by reference. The Kroll Preliminary Assessment was prepared pursuant to the authorization of the Austin City Council.

51. Despite the dramatic findings by Dr. Villanueva and the Community Review panel, persons with the APD training academy have been resistant to changing the police training curriculum. The Kroll Preliminary Assessment states:

a. "The majority of APD and Academy leadership have questioned the assertion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a 'warrior' mindset, which leads to an 'us vs. them' mentality of officers on the front lines fighting crime." (Exhibit D, page 5 of 22); and

b. "When asked if the Academy is proactively revisiting the existing curriculum and lesson plans . . . the answer provided is that Academy instructors and supervisors are awaiting further guidance and input from the new ODTM, whenever that person is hired to replace Dr. Villanueva." (Exhibit D, page 8 of 22).

52. Each of the above-quoted statements from the Kroll Preliminary Assessment was true.

53. On April 23, 2021 third-party consultant Kroll Associates, Inc. delivered to the City of Austin, Office of Police Oversight / City Manager's Office their Final Report on the Austin Police Department: Review and Assessment of Training Academy (herein the "Kroll Final Report"). The Kroll Final Report is attached to this complaint as Exhibit E and is incorporated herein by reference. The Kroll Final Report prepared pursuant to the authorization of the Austin City Council.

54. The Kroll Final Report states:

a. "The Academy at present remains a predominantly paramilitary training model." (Exhibit E, page 6 of 113);

b. "[I]n the greater context of police work, seeing oneself primarily as a 'warrior' is a precarious mindset. . . . [W]hen officers are taught to see citizens as potential threats to their life, they learn to fear them. Thus, interactions between police and the community often start with suspicion, vigilance and caution, and positive encounters become infrequent, if not impossible. Furthermore, since officers are taught to physically control their space and react forcefully to noncompliance, they sometimes escalate otherwise peaceful encounters, making situations more dangerous for both sides." (Exhibit E, page 16 of 113);

c. "Other components of the military model may also be inconsistent with the demands of modern policing. . . . [T]he use of recruiting videos and web content that routinely feature high-action sequences and appeals to strength and

violence over service can send the wrong message about the nature of policing in a progressive urban environment." (Exhibit E, page 16 of 113);

d. "Using a different training approach, police academies can establish a guardian-centric culture that focuses on service to the community rather than fighting crime, while still preparing officers to effectively react and respond to crisis situations. . . . Experts contend that this training style—which emphasizes strengthening officers' critical decision-making skills, communication, and emotional intelligence skills—is better associated with the skills and tactics necessary to handle complex situations that officers are likely to face in the field." (Exhibit E, page 17 of 113); and

e. "APD leadership has expressed its belief to Kroll that some aspects of a paramilitary structure are an essential component of police culture . . . . Indeed, the majority of APD and Academy leadership we spoke with questioned the suggestion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a 'warrior' mindset, which leads to an 'us vs. them' mentality of officers on the front lines fighting crime." (Exhibit E, page 49 of 113).

55. Each of the above-quoted statements from the Kroll Final Report was true.

56. On information and belief, the City of Austin and the APD maintain other policies, practices, and customs that reinforce, encourage, and tolerate the paramilitary training of its police officers, the "warrior mindset," and the "us-versus-them" approach to policing. These policies and procedures include, without limitation, investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and

complaints involving officer use of force. On information and belief, these additional policies, practices, and customs reinforce and exacerbate the pervasive APD culture that permits, encourages and tolerates the use of excessive force by Austin police officers.

C. Through its policies, practices, and customs, Austin created, encouraged, and tolerated a racist policing culture that particularly directed excessive force toward Hispanic and Black persons.

57. For many years prior to the fatal shooting of Alex Gonzales, Jr., the City of Austin adopted policies, practices, and customs that encouraged and tolerated a disproportionate use of excessive force targeted towards Hispanic and Black persons. The encouragement and toleration of the use of excessive force in a racially discriminatory manner was particularly engrained in the training methods and training materials used at the Austin Police Department Training Academy.

58. On December 5, 2019 the Austin City Counsel adopted Resolution No. 20191205-066 ("Resolution 66"). A copy of Resolution 66 is attached hereto as Exhibit F and is incorporated herein by reference. The Austin City Counsel duly adopted resolution 66 pursuant to its legal authority. Resolution 66 states in relevant part:

a. "[T]he City of Austin acknowledges that the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy." (Exhibit F, page 1 of 12);

b. "[T]he Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates." (Exhibit F, page 1 of 12); and

c. "[P]atterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust . . . and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum." (Exhibit F, page 4 of 12).

59. Each of the above-quoted statements from Resolution 66 was true.

60. Resolution 66 directed the Austin City Manager to "initiate a comprehensive, multi-pronged investigation and evaluation of the extent to which forms of bigotry and discrimination are present in the protocols, practices, and behaviors of the officers of the Austin Police Department." (Exhibit F, page 4 of 12).

61. Resolution 66 further directed the City Manager to "initiate an audit of the Austin Police Department's training materials, course/section descriptions and duration, and description of any other procedures (e.g. detailed descriptions of scenarios) administered to cadet classes and to active officers related to training on communication strategies, cultural competency, acknowledging and addressing bias, use of force, de-escalation, search, proactive policing, mental health response, protocols for non-English speaking persons, protocols for disabled persons, recognizing resistance and the rules and procedures that define resistance and their evaluation protocols, as well as the course/section content and duration of all other coursework required at the cadet academy and their evaluation protocols." (Exhibit F, page 9–10 of 12).

62. On December 28, 2020, the Peace Mill Evaluation of APD Training and Recruiting Divisions (described above) stated the following findings:

a. "Recent reports from sources including the Office of Police Oversight and APD's own internal investigator offer even further evidence that there are

serious gaps in the department's attempts to address racism and inequity in policing." (Exhibit B, page 20 of 152);

b. "The culture of the APD training academy, detailed firsthand by the courageous respondents who were interviewed for this research, conflicts directly with the department's recruiting and public relations campaigns, which proclaim a police department focused on diversity, equity and community engagement. APD's own data reveals repeated failures at achieving these goals." (Exhibit B, page 22 of 152);

c. "Further interviews with APD division leaders from multiple divisions indicate that the department's commitment to the equity assessment process has been similarly superficial." (Exhibit B, page 23 of 152); and

d. "In fact, it is hard to identify any meaningful, measurable commitments to equitable outcomes when assessing the division's responses [to the City's Equity Assessment Tool]. The division's staff is not diverse and there are no specific or measurable standards for ensuring equitable practices in day-to-day operations." (Exhibit B, page 34 of 152).

63. Each of the above-quoted findings from the Peace Mill Evaluation was true.

64. On December 28, 2020, the Peace Mill Evaluation of APD Internal Affairs and Professional Standards Division (described above) stated the following findings:

a. "APD's Internal Affairs and Professional Standards division has few strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a

significant deficiency in the division leadership's ability to implement principles of diversity, equity and inclusion." (Exhibit B, page 52 of 152);

b. "If the Training Division, which fails tremendously to implement principles of equity, does not graduate diverse classes from its academy, Internal Affairs is, by extension, prohibited from accessing a diverse candidate pool. Perhaps more than any other example, this highlights the need for deep and systemic changes at APD." (Exhibit B, page 52 of 152); and

c. "Evidence from the Internal Affairs and Professional Standards division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes." (Exhibit B, page 53 of 152).

65. Each of the above-quoted findings from the Peace Mill Evaluation was true.

66. On January 18, 2021, the Community Report (described above) offered the following findings with respect to its assessment of the videos and other training materials being used by the APD Training Academy:

a. "***[B]y far the most alarming pattern we witnessed*** [in the training videos] ***was the harmful stereotypes perpetuated against Black and Brown communities***. The videos shed light on the disproportionate interactions police have with Black, Indigenous, and Brown communities that result in violence and death." (Exhibit C, page 4 of 26, emphasis in original);

b. "Many of the videos showed People of Color, and in particular, Black people, being brutalized and/or their well-being utterly disregarded." (Exhibit C, page 6 of 26);

c. "There was gross overrepresentation of the use of force and negative outcomes from mostly White male officers interacting with Black and Brown community members. *We witnessed again and again Black men dying within minutes, sometimes within seconds, of an interaction with police.*" (Exhibit C, page 6 of 26, emphasis added);

d. "There were exceptionally few videos showing the police trying to de-escalate situations involving People of Color. In many of the videos showing encounters with community members over minor criminal infractions, *a strong emphasis on gaining compliance and control quickly led to rapid escalation with often violent and even deadly results.*" (Exhibit C, page 6-7 of 26, emphasis added);

e. "Many of the videos . . . are so disturbing in gratuitous violence against Black and Brown people that we strongly recommend that they only be used as examples of why community members historically mistrust the police. . . . We fear that repeated exposure to needless violence normalizes such interactions with the public for the cadets and desensitizes them to their own and their communities' humanity." (Exhibit C, page 7 of 26);

f. "There was a clear pattern, both explicit and implicit, of different communities being offered different degrees of understanding and grace by officers. Police interactions with upper-class, White communities were noticeably absent in the videos. White people were often given considerable grace and understanding even when they demonstrated dangerous behavior, while People of Color, in particular Black men, were given little to no grace or understanding even for minor and less threatening actions. For example, one video of an armed White

man showed an officer speaking calmly and reiterating the person's right to carry a firearm. *In contrast, in videos where People of Color were armed or even unarmed, police officers treated them as threats and moved towards use of force with great speed.* Such patterns echoed and reinforced popular narratives about, and attitudes toward, communities of color as more 'dangerous' in clear distinction to White people." (Exhibit C, page 8 of 26, emphasis added); and

g. "It was a very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats. In one example, we watched a police officer give a White-presenting man seven minutes of grace and conversation despite his suspicious behavior, while in several other videos a Black man was shot within seconds of being approached by an officer. The pattern we witnessed was that White community members in crisis are allowed to be in crisis; whereas Black community members, whether in crisis or not, are perceived with suspicion as threats." (Exhibit C, page 10 of 26).

67. Each of the above-quoted findings from the Community Report was true.

68. On April 23, 2021, the Kroll Final Report (described above), provided the following findings from its assessments of APD Training Academy training practices:

a. "[S]ome Academy instructors implicitly taught their students to be biased in enforcing the law. . . .[S]ome of the cadets perceived that the bias was inherently a part of Academy culture and that instructors were indoctrinated into that culture." (Exhibit E, page 42 of 113); and

b. "According to the cadets interviewed, while APD 'talked a good game' about being inclusive, in reality, they perpetuated exclusion." (Exhibit E, page 42 of 113).

69. Each of the above-quoted findings from the Kroll Final Report was true.

70. On information and belief, the City of Austin and the APD maintain other policies, practices and customs that reinforce, encourage, and tolerate the disproportionate use of excessive force against Hispanic and Black citizens and in predominantly Hispanic and Black neighborhoods. These policies and procedures include, without limitation, investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and complaints involving officer use of force. On information and belief, these additional policies, practices, and customs reinforce and exacerbate the pervasive APD culture that encourages and tolerates racially disproportionate use of excessive force by Austin police officers.

D. The City of Austin policies, practices, and customs demonstrably caused excessive force to be disproportionately directed at Black and Hispanic persons in Black and Hispanic communities.

71. For many years prior to the shooting of Alex Gonzales, the City of Austin has exhibited a demonstrable racial bias in its policing practices, particularly with respect to the use of lethal force and excessive force against Hispanic and Black individuals and/or in predominantly Hispanic or Black neighborhoods. The racial bias in policing outcomes is a direct result of the policies, practices, and customs of the City of Austin and APD, including but not limited to the training methods used to train officers at the APD Training Academy.

72. In 2016, the Center for Policing Equity conducted an assessment of City of Austin policing data for the years 2014 and 2015, and released a research report entitled "The Science of

Policing Equity: Measuring Fairness in the Austin Police Department" (herein the "CPE Report"). A copy of the CPE Report as published in October 2016 and revised in May 2017 is attached as Exhibit G and is incorporated herein by reference.

73. The CPE Report found that Austin police officers used more force in the neighborhoods where Black and Hispanic Austinites live as compared to use of force in predominantly White neighborhoods. Even after adjusting for crime and poverty variables, the CPE Report found that Austin police officers' use of force in Black and Hispanic neighborhoods was disproportionate and unjustified. The CPE Report stated:

a. "The raw data point to a disparity of treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty." (Exhibit G, page 2 of 18);

b. "Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA [metropolitan statistical area]." (Exhibit G, page 11 of 18);

c. "Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin's neighborhoods with a higher percentage of black or Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood *were statistically significant positive predictors of police use of force.*" (Exhibit G, page 12 of 18, emphasis added); and

d. "[A]nalyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained.** In other words, community-level explanations of use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks." (Exhibit G, page 15 of 18, emphasis in original).

74. Each of the above-quoted statements from the CPE Report was true.

75. On December 5, 2019 Austin City Council Resolution 66 (described above) recognized racial biases in APD policing practices and policing outcomes:

a. "[T]he City of Austin acknowledges the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy." (Exhibit F, page 1 of 12); and

b. "[T]he Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to cause severe force in communities where African-American and Latinos live, even after controlling for factors such as community crime and poverty rates." (Exhibit F, page 1 of 12).

76. Each of the above-quoted statements from Resolution 66 was true.

77. In November 2020, the Joyce James Report further documented the racial bias and disparities in the APDs use of lethal force and excessive force:

a. "Findings showed that residents in Austin neighborhoods with a higher percentage of African American or Hispanic/Latinx residents, those in poverty, and neighborhoods with higher crime rates, had disproportionate force and severity of force used upon them. When these possibilities other than race were adjusted statistically, African American and Hispanic/Latinx residents still experienced higher rates of use of force." (Exhibit B, page 125 of 152); and

b. "The Austin Police Departments Research and Planning Unit (2017) also produced data on use of force (along with other measures). In this case as well, when the use of force from 2014 to 2016 by race and ethnicity was compared to the population, African Americans and Hispanics/Latinxs had disproportionate force used upon them relative to Whites." (Exhibit B, page 125 of 152).

78. Each of the above-quoted statements from the Joyce James Report was true.

V. Cause of Action – 42 U.S.C. §1983

79. Plaintiffs assert this cause of action against the City of Austin pursuant to 42 U.S.C. §1983 and *Monell v. Dept. of Social Services of City of New York,* 436 U.S. 658 (1978). Plaintiffs incorporate by reference all allegations asserted in Sections I – IV, *supra*.

A. City of Austin employees who were acting under color of law violated the constitutional rights of Alex Gonzales, Jr.

80. The City of Austin employed Officer Gabriel Gutierrez and Officer Luis Serrato as police officers at the time each of them respectively shot Alex Gonzales, Jr. ("Alex"). Gutierrez and Serrato each acted under color of law when each of them separately shot Alex.

81. Even though Gutierrez was "off-duty" at the time he initially encountered Alex, all of his relevant interactions with Alex (including shooting Alex) were undertaken under color of law. The APD General Orders in effect on January 5, 2021[1] expressly permitted off-duty officers to take law enforcement actions while off-duty.[2] The APD General Orders at the time also expressly authorized any off-duty officers to carry a firearm while off-duty as "a law enforcement officer as authorized by this order . . . ."[3] The APD General Orders at the time required that, when an off-duty officer decides to intervene and take a law enforcement action, the officer "should clearly identify himself as a police officer to those involved in the situation, if practicable."[4] Under the authority granted to him by the APD General Orders as an off-duty officer, Gutierrez made a decision to intervene with respect to Alex and the other passengers in Alex's vehicle, and Gutierrez undertook law enforcement actions with respect to Alex, including but not limited to using lethal force and shooting Alex. After he shot Alex, Gutierrez can be heard on the 911 call recording shouting at Alex in an attempt to identify himself as an Austin police officer. Gutierrez also can be heard on the 911 call recording continuing to take law enforcement actions with respect to Alex by shouting verbal commands for compliance.

82. Gutierrez shot Alex without provocation or justification. Gutierrez had no reasonable basis to perceive that Alex posed a threat of danger to Gutierrez or to anyone else. Gutierrez acted with indifference to the potential harm to bystanders such as the other passengers in Alex's car. Gutierrez was the aggressor in his encounter with Alex. Gutierrez's actions were

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[1] On information and belief, the APD General Orders in effect on January 5, 2021 were the APD General Orders issued on June 1, 2020.
[2] *See generally*, Austin Police Department General Orders Issued June 1, 2020 at §364.
[3] *See id.* at §364.3(a).
[4] *See id.* at §364.1(b).

responsible for creating the initial confrontation and for escalating the events that ensued. No reasonable police officer would have used deadly force against Alex under these circumstances. Gutierrez's actions amounted to excessive force that was objectively unreasonable, in violation of Alex's rights under the Fourth Amendment and Fourteenth Amendment to the United States Constitution.

83. Serrato was an on-duty Austin police officer at the time he responded on the scene of Alex's shooting after Gutierrez called 911. Serrato's actions with respect to Alex were undertaken under color of law.

84. Serrato fatally shot Alex without provocation or justification. Serrato fatally shot Alex while Alex was struggling to render aid to the wounded passenger and check on the welfare of Alex's infant son who was in the back seat of the car. At the time Serrato fatally shot Alex, Alex did not have a gun in his hand and Alex did not point a gun at anyone. Alex made no aggressive move toward anyone that would indicate Alex posed a danger at all. Alex had already suffered a gunshot wound from being shot by Gutierrez, and Alex was visibly struggling with his bodily movements. Serrato acted with indifference to the potential harm to bystanders. No reasonable police officer would have used deadly force against Alex under these circumstances. The actions of Serrato amounted to excessive force that was objectively unreasonable, in violation of Alex's rights under the Fourth Amendment and Fourteenth Amendment to the United States Constitution.

85. The violations of Alex's constitutional rights by Gutierrez and Serrato were a cause of Alex's death and the damages alleged below.

B. The City of Austin is liable for damages caused by the violation of Alex's federal constitutional rights.

86. Defendant City of Austin implemented the following policies, practices, and customs prior to and on January 5, 2021:

a. As alleged above, Austin utilized the Austin Police Department Training Academy to train Austin police officers to adopt a paramilitary culture that emphasized and promoted a "warrior mindset" and an "us versus them" approach to policing that permitted, encouraged and tolerated the use of excessive force;

b. As alleged above, the APD Training Academy used training materials and training techniques that created, encouraged, and tolerated a racist policing culture that particularly directed excessive force toward Hispanic and Black persons and/or in incidents occurring in predominantly Hispanic or Black neighborhoods;

c. As alleged above, the Austin Police Department maintained a long history of racially discriminatory bias in its policing practices, including the disproportionate use of lethal force and excessive force toward Hispanic or Black persons and/or in incidents occurring in predominantly Hispanic or Black neighborhoods; and

d. On information and belief, Austin has other policies, practices and customs that reinforced and exacerbated the above policies, practices and customs, including but not limited to investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and complaints involving officer use of force.

87. Prior to and on January 5, 2021, each of the policies, practices, and customs alleged above was persistent and widespread throughout the policing practices of the Austin police department.

88. Prior to and on January 5, 2021, each of the policies, practices, and customs alleged above was known to one or more City of Austin policymakers. One or more Austin policymakers ratified, adopted or approved of each of the alleged policies, practices and customs prior to and on January 5, 2021. One or more Austin policymakers acted with deliberate indifference to the known and obvious consequences of the identified policies, practices and customs, including the likely violations of the constitutional rights of people harmed by the identified policies, practices and customs.

89. The identified Austin policies, practices, and customs were the moving force that caused the violation of Alex's constitutional rights and the injury and damages he suffered therefrom, including his death. Gutierrez and Serrato each received police training through the APD training academy, in which they were trained within a paramilitary culture that taught them a "warrior mindset" and an "us versus them mentality" that encouraged and promoted excessive force. Gutierrez and Serrato each were taught, through the APD Training Academy, to perceive Hispanic individuals in predominantly Hispanic neighborhoods as an inherent and imminent threat of danger. Gutierrez and Serrato each were taught, through the APD Training Academy, policing methods that encouraged acceleration of force and quick use of lethal force when responding to incidents involving Hispanic males in Hispanic neighborhoods. Alex was a Hispanic male. Gutierrez and Serrato shot Alex in an area of Austin that is an "overwhelming Hispanic population center."[5] Alex was shot in the same neighborhood in which Austin police officer Christopher

[5] "Maps of Hispanic household concentrations from Census 2000 reveal the emergence of three overwhelmingly Hispanic population centers in Austin: lower east Austin (which also serves as the political bedrock of Austin's Hispanic community), greater Dove Springs, and the St. Johns area." *Top Ten Demographic Trends in Austin, Texas*, austintexas.gov (https://www.austintexas.gov/page/top-ten-demographic-trends-austin-texas).

Taylor shot and killed Mike Ramos less than one year earlier, in a particularly high-profile officer-involved shooting.

90. On information and belief, Gutierrez and Serrato each believed that his respective actions related to each officer's shooting of Alex would meet with the approval of supervisors and other Austin investigators of the events because each believed that his actions complied with the City of Austin's and the APD's policies, practices, and customs.

91. On information and belief, the City of Austin has further ratified the policies, practices, and customs alleged above by failing to conduct an adequate internal investigation of the shooting of Alex, by failing to take appropriate disciplinary and/or administrative action with respect to Gutierrez and/or Serrato, and by failing to implement changes to its policies, practices and customs in response to the shooting of Alex and other similar incidents.

C. The violation of Alex's constitutional rights caused significant damages.

92. Alex was a happy, loving man, who adored his parents and cherished his newborn son and his new role as a father. His tragic and unnecessary death at the hands of police violence, acting in violation of Alex's constitutional rights, caused sever and permanent damages, including Alex's death.

93. Plaintiffs seek recovery of the following categories of damages in their capacity as wrongful death beneficiaries of Alex, pursuant to Texas Civil Practice and Remedies Code section 71.004:

a. Mental anguish damages (past and future) for the emotional pain, torment and suffering Plaintiffs have experienced and will continue to experience because of the death of their son;

b. Loss of companionship and society damages (past and future) for the loss of positive benefits flowing from the love, comfort, companionship, and society that Plaintiffs would have received from Alex had he lived; and

c. Pecuniary loss damages (past and future) for the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that Plaintiffs would have received from Alex had he lived.

94. Plaintiffs further seek the following categories of damages:

a. Prejudgment and post-judgment interest;

b. Costs of court;

c. Reasonable and necessary attorneys' fees incurred by Plaintiffs through trial, along with reasonable and necessary attorneys' fees that may be incurred by Plaintiffs for any post-trial proceedings or appeal, pursuant to 42 U.S.C. §1988; and

d. Any further and additional relief to which Plaintiffs may be legally entitled.

VI. Request for a Jury Trial

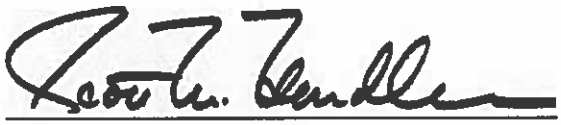
95. Plaintiffs request a jury trial on all issues that legally may be tried to a jury.

VII. Prayer

96. Plaintiffs Alex Gonzales, Sr., and Elizabeth Herrera request that the City of Austin be summoned to appear and answer Plaintiffs' allegations. After a jury trial regarding their claims, Plaintiffs pray the court enter judgment in their favor on the asserted claim under 42 U.S.C. §1983, assess monetary damages for the injuries alleged above, and award any other relief to which Plaintiffs are legally entitled.

Respectfully submitted,

HENDLER FLORES LAW, PLLC



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ATTORNEYS FOR PLAINTIFFS

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

Case No. 1:22-cv-655

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

ALEX GONZALES, SR. and ELIZABETH HERRERA

(b) County of Residence of First Listed Plaintiff BASTROP
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Scott M. Hendler - HENDLER FLORES LAW, PLLC
901 S. MoPac Expy, Bldg. 1, STE 300; Austin, TX 78746
(512) 439-3200

DEFENDANTS

THE CITY OF AUSTIN

County of Residence of First Listed Defendant TRAVIS
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced an Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedu Act/Review or Appeal o Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C. § 1983

Brief description of cause:
Civil Rights Violation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Robert Pitman DOCKET NUMBER 1:20-cv-1256

DATE 7/6/2022

SIGNATURE OF AT DocuSigned by: Scott Hendler 1B780EBCD30842E...

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case No. 1:22-cv-655

COMPLAINT
EXHIBIT A

Memorandum

Austin Police Department

Headquarters Bureau/Training Division

To: **Chief Brian Manley**
From: **Dr. Sara Villanueva**
Date: **May 22, 2020**
Subject: **APD Training Academy Review and Strategic Plan**

This memo provides the background and context necessary for a full understanding of the review analysis and strategic plan that follow. In September 2019, I began my second career as the inaugural Organizational Development and Training Manager at the Austin Police Department, specifically focusing on the Training Academy. With over fifteen years of leadership experience in academia, I came to APD with significant proficiency in curriculum development, teaching and learning methods, and Diversity, Equity, and Inclusion work.

While getting acclimated in the first months, my initial priority at the Training Academy was to conduct a needs assessment. Soon thereafter, I decided instead to conduct a more comprehensive SWOT analysis to create a developmental pathway to organizational and academic success for academy instructors, cadets, and leadership. After the initial report was drafted, I was informed by APD leadership that the full and final report would be included in APD's official response to Resolution No. 20191205-066. To that end, what follows is the final report which includes the SWOT analysis, followed by a strategic training plan draft that will require review and approval from the Chief of Police and the APD Executive Team.

The creation of this document has been an iterative process. The initial draft was based on observations made early on in my tenure at APD. The final report incorporates those early observations as well as recent, more comprehensive professional experiences. It is important to note that although I am employed by APD, and although I did, on occasion, seek out consultation from colleagues in academia with expertise in specific fields, the work outlined in this report is independent, objective, and supported by research wherever possible. As such, a reference page is included as an addendum for further review.

Respectfully,

Sara Villanueva, Ph.D.

2020

Review Analysis and Strategic Plan

AUSTIN POLICE DEPARTMENT
TRAINING ACADEMY
SARA VILLANUEVA, PH.D.

ORGANIZATIONAL DEVELOPMENT & TRAINING MANAGER | May, 2020.

Austin Police Department
CADET TRAINING ACADEMY

REVIEW ANALYSIS

This analysis was completed with the understanding that the reviewer's perspective can and will change with more time, experience, and insight at the Austin Police Department Training Academy. It should be noted that despite some overlaps in instruction, the following assessment primarily focuses on the academic programming, also known as the cadet side of the training academy, and not necessarily on the Learning Skills or Continuing Education areas.

The method of review is based on conducting a SWOT analysis, which is an organizational/planning tool used to understand the Strengths, Weaknesses, Opportunities, and Threats involved in running an organization. SWOT analysis aims to identify key internal and external factors seen as important to achieving an objective. SWOT analysis groups key pieces of information into two main categories:

Internal factors — the strengths and weaknesses internal to the organization

- What do you do well?
- What unique resources can you draw on?
- What could be improved?
- Where do you have fewer resources?

External factors — the opportunities and threats presented by the environment external to the organization

- What opportunities are open to you?
- What trends could you take advantage of?
- How can strengths be turned into opportunities?
- What threats do your weaknesses expose you to?

SWOT analysis is typically used as part of a strategic planning process, and in this case is being utilized to understand what works, what doesn't, and guide the organization in creating a strategic plan for the Austin Police Department Training Academy.

Strengths	must be maintained, built upon or leveraged.
Weaknesses	must be remedied, changed or stopped.
Opportunities	must be prioritized, captured, built on and optimized.
Threats	must be countered or minimized and managed.

Strengths

Information gathering stage of analysis. Reviewer has had numerous formal and informal meetings and discussions with the training commander, training leadership, staff, several instructors, and a few patrol officers. Further, reviewer has conducted class observations and participated in numerous departmental and academy leadership meetings. This collection of qualitative data yielded the following observed strengths that have been organized into potential areas of strategic focus. Note that this is an assessment as of the present time (i.e., snapshot), and does not reflect any historical context or institutional memory on the part of the reviewer.

Organizational Structure

- Excellent leadership. The training academy Commander is very organized, responsive, and consistently communicates very well with leadership at the training academy. Commander holds weekly briefing meetings with leadership, systematically reviewing progress of cadets in academics, learned skills, personal issues, etc. Very thorough, very informative. Through the chain of command, academy leadership and instructors all work collaboratively to keep one another informed of any changes in status for each and every cadet.
- Hierarchical structure in place lends stability and consistency in the ability to effectively communicate and direct information up and down the chain of command.
- All members of academy leadership are well informed and keenly aware of TCOLE and BPOC standards and remain vigilant about compliance. After numerous meetings with leadership who directly oversee academy courses and instructors (Sergeant and Corporal over cadet training), it is clear that training academy curriculum carefully adheres to three regulatory areas: TCOLE, BPOC, and Austin Police Department, and has, over time, incorporated/added courses in response to legislative mandates.
- Structure of Instructor Departments, POCs of those departments, and which classes are taught by which department/instructor is documented and stored on network drives.

Culture

- While still supporting the paramilitary structure, academy staff all contribute to a relaxed and family-like atmosphere. The work environment is such that people are respectful, encouraging, and supportive of one another. These daily behaviors create a cultural milieu that is extremely important because it appears to lead to mutual trust, collective efficacy, and confidence in the academy.
- Instructors informally gather during lunch to communicate any relevant information regarding cadets or classes, but more importantly, to check in with one another, decompress, and build a shared community. This comradery is vital to morale, job satisfaction, and productivity.
- Ethnic and racial diversity in academy leadership is excellent. Despite being securely set in a chain of command, diversity of thought, perspective, gender, etc. is actively sought out and thoughtfully considered when making decisions at the weekly academy leadership team meeting. If the objective is to have a police force that reflects the community they protect, APD Recruiting has made great strides in efforts to increase the number of female recruits. It is similarly important to be inclusive of *all* diverse groups and perspectives: transgender and non-binary, diverse religious beliefs, etc. An excellent example of APD Training inclusion, which also incorporates community input, is a series of Informa training modules on Transgender issues and the use of a gender-neutral affidavit. Sgt.

Michael Crumrine and training academy instructor Ofc. Greg Abbink have included subject matter experts in the community as part of this important project. Clearly, being deliberate in the awareness of individuals' experiences is an ongoing goal for everyone. That said, increased diversity in the faculty would be beneficial, as they are the ones with whom cadets interact and are influenced by most. More on this later in the Weaknesses section under Diversity, Equity, and Inclusion.

Curriculum

Note that a complete and comprehensive review of the entire curriculum will take significant time, and in my opinion, should be an ongoing, iterative process. This said, the curriculum review process is currently underway. The following observations are based on the initial review:

- When considering the length of the curriculum (8-month academy), it is understood that the most recent revision of the BPOC resulted in many (8) of the classes currently taught at the Academy as Intermediate level now be considered part of the BPOC. Continuing work in this review will examine potential opportunities for efficiencies and possible consolidations.
- Training leadership, specifically the Sergeant and Corporal over cadet training work diligently, and go to almost extreme lengths to ensure complicated and ongoing schedule of courses for academies (regular and modified) meet expected regulatory standards. They also go to great lengths to manually overlap concurrent class schedule to ensure that all required courses are included and look for potential conflicts in schedules. This too is an iterative and tedious effort. This point will be further discussed in Weaknesses section.
- Sequencing of courses in academy curriculum is normally considered when new cadet classes are scheduled, particularly when classes begin to overlap. While preparing this document, effects of the national pandemic COVID-19 took hold and required training to be moved online. In doing so, the priority with respect to sequencing was to move all 'cognitive' courses online, while pushing all experiential/hands-on courses (i.e., firearms, defensive tactics) toward the end of the schedule, when cadets are expected to return to campus.
- In preparation for Cadet Class #143, instructors were tasked with conducting a new review of individual lesson plans for their respective courses to ensure compliance with new BPOC standards; and further, to assess time required to teach each course to meet each BPOC module time requirement. In addition to this general time assessment, particular attention was paid to those subjects/courses in which APD actual hours taught far exceed the minimum hours required by BPOC again to look for possible efficiencies.
- Overall curriculum is in compliance of TCOLE standards, and is continually monitored for compliance when updates are made to any regulations. Further, leadership work with instructors to review curricula to ensure TCOLE/BPOC requirements are met.

Teaching Effectiveness

- With few exceptions, the majority of instructors that I have observed are well prepared in the course content outlined using TCOLE lesson plans. It is clear that most faculty have excellent command of experiential knowledge as it relates to the topic they teach.
- In general, instructors are well-organized, run classes efficiently, and begin and end on schedule.
- Of the instructors observed, teaching methods and styles vary significantly. Some due to personality, some to teaching experience, and some due to the teaching methods to which they are accustomed or trained. It is clear that some instructors are more comfortable and at ease in the classroom than others. *The possible influence of a class observer on teaching should be considered.*

The vast majority of academic classes observed thus far present content material on Power Point slide presentation format, but have varying degrees of interactive learning.

- Overall, instructors do a fine job of checking for understanding, and generally being open to questions after each section/class.
- All instructors who have been observed have expressed being open to feedback and suggestions to improve teaching.
- Most recently, the abrupt necessity to move courses online due to COVID-19 has challenged instructors to transition to online teaching, which is no easy task. Based on my observations of the online courses thus far, I have been impressed by the work that has been done by instructors to make this unexpected transition. Again, I have witnessed significant variability in the ease in which the transition has been made as well as with the teaching methods and learning strategies employed by instructors; but overall, instructors have risen to the challenge done an outstanding job during these unprecedented and difficult times.

Weaknesses

Based on initial observations, individual interviews/meetings, baseline information-gathering for context purposes (reading TCOLE, BPOC, President's Report, Community Policing, ICAT, and Matrix), and more recently attendance at the inaugural National Symposium on Police Academies and Training and the 2019 TCOLE Conference, items below are identified not simply as *weaknesses* in the Academy, but as *challenges* for potential future strengths in the overall objective to maximize organizational development and teaching effectiveness.

Organizational Structure: Process Improvement

One of the most pressing challenges pertains to systematic and reliable processes that must be put into place in order to ensure consistency, reliability, and efficiency. Although significant daily efforts are made by staff to keep the training academy running effectively, having consistent and reliable processes in place would contribute to running it effectively *and* efficiently. It would also lead to programmatic sustainability and security, given staff changes across time. Current challenges identified thus far in this category include:

- Process around communication and relevant/important dates and notices within the Academy involving leadership/ instructor/cadets. Presenting relying primarily on email and verbal messaging.
- Processes around and organization of course material for instructors - in addition to the ability to post announcements or communicate with entire class or individual student cadets (versus email). Presently all material saved to the network. Organization of the network folders is unclear, with several files being outdated or empty, and little consistency in classification or naming structure.
- Process of scheduling academy classes (overall – excel sheet with dates of academy cadet classes across years), and specific course schedules for each cadet class (i.e., #141, 142m, 143). At present, there is a clear overreliance on Excel to create academy schedules – primarily because it is the only tool available; secondarily because it is the way it has always been done, thus default.
- Consistent and ongoing/sustainable process of tracking BPOC/Academy course alignment and hours. Currently, all scheduling is done manually using Excel spreadsheets to create weeks 1- 32 populated by module/topic, printing out, manually manipulating the printed weeks on a table, then

going back to Excel to make modifications. The current system of scheduling, course alignment, and tracking is inefficient, time consuming and leaves significant room for human error. Because it is all done without the use of any scheduling software, the chances for error are high, thus creating the need for a reliable process. Because it is well understood that staff turnover is a reality, a clear process must be put in place to ensure consistency, reliability, and sustainability regardless of staff turnover.

- Process of systematic and consistent organization of all training academy related documents, including but not limited to documentation required and tracked by TCOLE: currently all held on the network Drive. Note that documents referred to in this section are separate from instructor teaching material. A process that involves a clear and systematic file naming structure, classification, or taxonomy is needed.

Culture

- Paramilitary culture
    - APD Training Academy operates under a paramilitary training format with strict adherence to chain of command and employs 'behaviorist instructional methodologies' which rely on the assumption that learning occurs primarily through the use of reinforcement schedules, behavior modifications, and other behavioral approaches (Birzer, 2003; Birzer and Tanneill, 2001, 2004).
    - Although the paramilitary-based training format may build camaraderie, research has shown that it tends to be associated with high dropout rates (Blumberg, Schlosser, Papazoglou, Creighton, & Kay, 2019), as it fails to acknowledge individual differences in learning styles, personalities, and interpersonal skills in cadets as well as instructors.
    - There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-oriented police services model. A growing body of research has shown that paramilitary-structured academies do not align well with the principles of community policing and problem solving which are based on collaborations and partnerships (Chan, Devery, & Doran, 2003; Chappell & Lanza-Kaduce, 2010; Conti, 2011).
    - This model also overrides and perhaps even neglects basic principles of adult-learning theory (andragogy).
- Diversity, Equity, Inclusion
    - Diversity amongst the faculty is paramount for any learning institution. For decades, researchers, social scientists, and teaching & learning scholars have argued the various merits of not only having a diversified student body, but just as importantly, a diverse faculty. With respect to teaching, mentoring, and training, there is also significant evidence showing links between institutions having diversity in the faculty and various indicators of achievement in students from diverse backgrounds.
    - The good news is that there has been an increase in diversity (gender and ethnicity) when it comes to cadets recruited and accepted into the APD Training Academy. And despite recent increases in diversity amongst leadership at the training academy, the not-so-good news is that the faculty teaching those cadets are still primarily White males. Moreover, the cultural ethos at the academy is still securely grounded in patriarchal belief systems and practices, with some concerning indicators being subtle or subliminal and others more obvious.
- Wellness

- Instructors' physical wellness is attended to and evidenced by routine individual and group workouts. However, mental and psychological wellness should be similarly encouraged and supported, particularly as it relates to the stressors associated with back to back teaching.
- Building psychological and emotional wellness in cadets should also be a priority that is embedded into the curriculum. The current curriculum includes some coverage of stress management and mindfulness at the beginning of the academy, but this is an issue that should be reinforced throughout the entire 32-week academy.

Curriculum

- As part of the internal audit mandated by Resolution 66, specific courses in the existing curriculum are currently being reviewed. Recommendations regarding assessment of those courses as well as evidence-based recommendations will be included in a review summary report.
- The 32-week academy contains courses that include the Basic Police Officer Courses, and in addition, intermediate certification courses as well as APD specific courses. In accordance with the Texas Commission on Law Enforcement regulations, BPOC courses cannot be eliminated or modified; however, the value add of other courses should be assessed to eliminate any courses that are not as relevant or impactful as in the past, and perhaps include new courses that fall in line with updated, innovative curriculums being used in other training academies across the country.

Teaching Effectiveness

Current challenges include:

- A major area with opportunities for development relates to Instructor Preparedness, Training, and Evaluation. The following observations and subsequent suggestions are based on the fact that effective instruction is at the core of what we do at the APD Training Academy.
  - Instructor Job Description, Expectations, and Evaluation: Under *Duties and Responsibilities*, the current job description for Cadet Training Instructor does not explicitly include any descriptions or expectations of teaching or pedagogical training if hired. The job description is essentially a lengthy list of items. The inclusion of listed items such as "Ability to write legibly and to read" communicates a very low academic standard, particularly given the position as an educator.
  - Regarding performance evaluations, the instructor evaluation form (SSPR) must also incorporate corresponding teaching/pedagogical expectations reflecting those detailed in Cadet Instructor job description. In sum, instructors must be appropriately trained and developed as professional educators, with subsequent evaluation of their teaching effectiveness.
  - Instructor Training: Cadet Training Instructors do not receive any formal preparation or training on how to teach effectively. The Basic Instructor Course (BIC) offers TCOLE mandated basic information regarding logistical issues around teaching, but does not go into more nuanced, yet highly impactful teaching strategies and considerations, particularly as they relate to adult learning theory. After the BIC, new instructors receive guidance on following the processes already in place, and are expected to shadow current instructors in preparing lesson plans and teaching. However, there is no formalized onboarding process in place to determine when they have sufficiently

prepared to begin teaching independently, other than existing instructor discretion. A more formalized professional development plan should be created and utilized.

- Instructor Teaching Resources: Both incoming and existing instructors have very little resources regarding effective teaching methods that focus on adult learning theory or teaching in the context of continually changing cohorts.
- Instructor responsibilities on Course Content. In conducting numerous informal class observations, and in reviewing lesson plans and Power Point presentations, it is clear that there is considerable variability in quality and understanding of content material being presented. It is clear that TCOLE provides the essential material to be covered via pre-prepared lesson plans. That said, it is the responsibility of each instructor to learn the material, conduct further research for understanding and context, and obtain a firm understanding of the course material before teaching the class.

- Another area with opportunities for development relates to exams being created for and given to APD Cadets. Despite other areas of assessment required for successfully completion of the APD Training Academy (PT, Firearms, etc.), exam performance carries substantial weight in the success or failure of academy completion. Due to the policies around number of test failures, and the 80% passing standard, cadets are dismissed, at times, for academic reasons. Thus, a thorough review of testing policies and procedures is warranted, as well as investigations into more current testing platforms. At present, the process of creating exams is adequate, but not optimal, as it is tedious, over-reliant on multiple choice questions (not ideal), and perhaps a bit antiquated.

Opportunities

In the context of SWOT analysis, the section on Opportunities focuses on elements in the larger environment/community that could be used to an advantage for the Austin Police Department. Opportunities must be prioritized, captured, built upon and optimized. Below are considerations for this category.

Organizational Structure: Process Improvement

The vast majority of problematic issues in the previous section would be addressed by simply adopting a secure and reliable Learning Management System with the appropriate capabilities, and establishing a reliable process. After several months spent investigating various platforms that could align with the needs of the academy as well as meet necessary City of Austin security criteria, academy leadership is now considering the adoption of Informa LMS, Scheduler, and Evaluation/Testing bundle. This bundle of services will increase efficiency, organization, security, and in the long term, increase productivity.

A securely managed LMS could not only provide a platform for all Academy/Teaching-related material to be housed in an organized manner, but would also provide more efficiency to leadership in curriculum planning (including any updates or modifications) for current and subsequent cadet classes, save instructor time in course prep and planning, and in general make instructor's lives a bit easier by having a course set up and ready to go, even in the event that any given instructor were required to step in on short notice. Once a course is set up on the LMS, the contents: lesson plans, lecture slides, current/relevant video clips, assignment, class activities, online quizzes or exams, any collaborative work, and gradebooks are all securely housed and easily accessible to anyone with authorized secure

log-in credentials. Courses stored on the LMS would only require updates each term thereafter. Thus, an appropriate LMS can provide efficiency, ease, and save time in course preparation as well as a means by which secure communication, upcoming events, etc. can occur between all constituents at the training academy. Most importantly, it can provide security and ensure accurate BPOC and TCOLE tracking. Based on shared best practices between police training academies across the United States, the use of this type of technology has proven to be a prospective solution for the APD Training Academy.

Culture

Paramilitary culture

Despite many successes in the long-held paramilitary tradition, numerous scholars and community members alike have proposed a shift in the culture that currently exists in the majority of police training academies across the country. The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime. There is no doubt that this warrior mentality can be very useful in addressing certain acute situations, and of course, officer safety must continue to be a priority in training. However, most interactions with community are not acute. Instead, the focus of training should be on nurturing the relationship between police and the community they serve. The warrior mindset, and the fear that drives it, must change (Sanburn, 2016, Stoughton, 2015). It is time to reclaim the wisdom and power of servant leadership where officers are viewed as guardians that serve and protect their community.

Police departments across the nation are responding to this call to action by moving away from a paramilitary model that emphasizes fear-based learning and strict adherence to commands (i.e., the warrior model), toward an adult learning model that instead values high quality instruction and the development of critical thinking skills, effective communication, and better emotional intelligence in cadets' preparation to work collaboratively with the community they serve and protect (i.e., guardian model). Researchers stress the importance of adopting an adult learning model in training recruits to work within a community-oriented policing model (Schlosser, 2013). Using shared innovative practices from other police training academies, the Austin Police Department Training Academy should seriously consider this cultural/paradigm shift by moving beyond behavioral training techniques and integrating the following psychosocial skills into the curriculum to truly 'build and educate the best police officers in the nation':

- Understanding basic human behaviors in the context of policing (basic Applied Psychology course)
- Cognitive skill training (Decision-making/Judgment, Impulse control/Safety, Adaptability/Flexibility)
- Emotional skills training (Emotion regulation/Stress tolerance, Emotional Intelligence)
- Social skills training (Social competence, Teamwork/Collaboration, Assertiveness/Persuasiveness)
- Moral skills training (update and expand current teachings on Integrity & Ethics)

Further, future officers in training should be given the opportunity, while still in the academy, to actively engage with and work in the community, alongside the people that they will serve. Whether this is in the form of ride outs, and/or better yet, participation in community sponsored and community-building events. This shift in emphasis would clearly signal that APD and the training

academy are committed to rebuilding a strong, positive relationship with the Austin community. In sum, modern policing faces increased complexity, which requires officers to respond to difficult and quickly changing challenges of a diverse society in more flexible ways (McGinley, Agnew-Pauley, Thompson, & Belur, 2019). Thus necessitating a greater emphasis on the afore mentioned skills.

Diversity, Equity, Inclusion

The issue of race as it relates to policing is clearly an area of concern for many. Numerous efforts throughout the city and department are currently underway to address citizen concerns. At the training academy, several courses addressing multiple topics around race, culture, and community (i.e., Fair & Impartial Policing, Multiculturalism, Racial Profiling, History of Policing, and others) are currently taught in the existing curriculum. As part of the Resolution 66 internal audit, these courses are currently under substantial review and the subsequent report will offer more insight on making improvements to content and teaching effectiveness. When completed, course reviews, which are based on formative assessments, will result in several recommendations given to not only update the content of the materials to reflect current scholarly research on diversity, equity, and inclusion issues, but will also include pedagogical strategies to promote effective delivery of the material. Further, colleagues at The University of Texas School of Law, in collaboration with the Office of Police Oversight, have created a new course that gives insight into the History of Policing and Race in Austin. By including this course in the curriculum, the training academy ensures diverse perspectives are being presented when learning about police history in context.

To become more diverse and more inclusive, the training academy must examine their own organizational capacity to prepare all cadets for a world that is changing, complex, and already very diverse. APD cannot expect future officers to meet the intricate needs of our community if we cannot meet those needs within our own organization. Any disparities within the academy must be rectified by closely examining cadet recruiting policies and practices, interview and hiring board processes for cadets and instructors, yearly evaluation processes for instructors, and shifting the strategic goals of the organization toward a more inclusive excellence model. The inclusion of unconscious bias assessments into the cadet recruitment process, and cultural competency training for all academy instructors and staff would both be good examples of the training academy's commitment to Diversity, Equity, and Inclusion. Specifically, with respect to the fact that faculty of color and female faculty are underrepresented at the academy, it is worth recognizing that such underrepresentation is detrimental to the success of student cadets of color and female cadets.

As part of a culture shift whereby true inclusion of all diverse perspectives is embraced, another opportunity for APD is to include programming based on the work done by Dr. Glenn Singleton and his colleagues in *Beyond Diversity: Creating Courageous Conversations About Race*. At present, leadership at the APD Training Academy has attended the workshop. However, a formal proposal is being created to include a more comprehensive and sustainable program tailored for APD which includes Leadership Development as well as cadet and current officer education on cultural sensitivity and competencies.

Times have changed and the academy, as well as the department as a whole, must change with it. A genuine cultural shift could increase organizational agility, and would go a long way toward improving

police and community relations in Austin (Kringen, 2019; Kringen & Novich, 2017; Perez McCluskey & McCluskey, 2008; Schuck, 2016; Schuck, 2017; Silvestri, 2019; Todak, 2018).

Wellness

Instructors. To avoid instructor burnout that could lead to low morale, low effort, and low job performance, and to avoid higher turnover rates for instructors at the academy, APD leadership must be mindful of recovery time between cadet classes. At present, when accounting for both regular and modified cadet classes, instructors have very little, if any, time off from teaching between the end of one cadet class and the beginning of the next. Based on first-hand experience as well as a significant body of literature, this is a vital issue that directly impacts job performance and, in this case, teaching effectiveness.

Cadets. It would behoove both current and future officers for the academy to place more emphasis on preparing cadets to successfully cope with the emotional challenges of this profession. APD training has the opportunity to infuse into the existing curriculum comprehensive programming where mental health experts can address officers' emotional regulation and stress tolerance in an effort to build long-term skills that cadets can take into their future work- and life-experiences.

Curriculum

Based on supported arguments made in *New Directions in Police Academy Training* (Blumberg, Schlosser, Papazoglou, Creighton, & Kay, 2019), the curriculum should also include previously mentioned courses taught by content experts that focus on the following evidence-based topics: understanding basic human behaviors (i.e., a tailored applied psychology course), social skills (i.e., coping skills to help officers navigate difficult encounters when interacting with community members, as well as coping with the strain that police work places on them, their families, and friends), moral development, and effective communication strategies. These courses, along with those that focus specifically on Diversity, Equity, and Inclusion issues should be solidly grounded in current, empirical research and taught by outside scholars who have expertise in the fields.

Further, because the 32-week academy is already longer than most police training curricula, and because adding more classes without judiciously reviewing the value-add of existing courses, the academy should reconsider including all intermediate level courses as part of the curriculum before graduating new officers. From the reviewer's perspective, it makes sense that only after having some time and experience in the role of police officer should she/he/they then be expected to begin to think about intermediate level courses. The experiences themselves would help new officers make sense of and provide context for the intermediate level courses, thereby leading to more meaningful learning and retention of information.

Teaching Excellence

Make no mistake. Police training academies are institutions of higher learning. There is a nuanced but important difference between training and teaching. Training denotes a hands-on, practical, step 1, step 2 method of conveying information. Teaching seeks to impart knowledge and provide opportunities for deep comprehension and long-term retention of knowledge by relying on learning theories and engaging students using various strategies and methods. In the context of police academies, both training and teaching can go hand in hand. But, when considering the importance of the material being taught by academy instructors in the classroom, the fact that they really are creating

future officers for our community, and the fact that we need new officers to remember what they learned when out on the street, the stakes are high and we should get serious about investing in our instructors.

The reviewer recognizes that the academy is not a college or university, but it is a place of learning nonetheless. And as such, making sure that academy instructors have the training, experience, and resources necessary to reach teaching excellence should be a top priority. Instructors, cadets, officers, and the community as a whole all deserve this.

Regarding comments made in the previous weaknesses section around Instructor preparedness and development, below are reviewer recommendations:

- Revise Cadet Training Instructor job descriptions to include appropriate expectations, duties, and responsibilities around Teaching Effectiveness. Similarly, revisions to the Cadet Training Instructor evaluation (SSPR) are being suggested to ensure that the updated SSPR appropriately reflects the corresponding revisions to the job description.
- Similarly make modifications to Cadet Selection Board materials to incorporate appropriate pedagogical language throughout document. I.e., include terms such as Teaching, Active/Adult Learning, etc., to signify that the position goes beyond the ability to complete a lesson plan template and create power point slides, rather based in serious pedagogical methodology. "Grading" of presentation should also include ratings on teaching methods.
- Review our Basic Instructor Course offered at the training academy to make sure it includes information on
  - Cohort/Generational differences
  - Pedagogy/Teaching Adult Learners
  - Active and Interactive Learning in the Classroom
  - Effective Teaching Methods
- Create a series of Train the Trainer (T3) teacher education online courses that new instructors would be required to take BEFORE teaching independently. Course topics could include the following (see bullets below), and would be offered online so that new (and existing) instructors can complete them while working around their schedules. Note: this could be accomplished via the now accessible LinkedIn Learning tool where specific learning pathways can be developed specifically for academy instructors.
  - Teaching adult learners
  - Innovative teaching techniques: focus on active, interactive, and inclusive models
  - Presentation 2.0: Moving beyond Power Point slides
  - Other topics at suggestion of instructors, training academy leadership, commander
- Provide new instructors a mentor/coach (experienced instructor) for onboarding. Provide mentor instructor a checklist of items to cover with new instructor. After initial probationary period, and once new instructor is teaching independently, mentor should conduct course observations and periodically scan through instructor course material to ensure that that course content and corresponding exam content are regularly updated to reflect current/relevant course content information (including video clips, examples, activities, etc.)

Instructor resources and Professional development:

- Transform the existing training academy website to include a page/tab for instructor access only, specifically dedicated to housing various instructor resources such as empirical articles on

teaching and learning, video clips, sample class activities, instructor cheat sheets on how to keep content updated, etc.

- Create a peer-review program that would utilize class observations to provide individual instructors the opportunity to receive valuable feedback from a senior peer instructor on teaching effectiveness:
    - Class observation: Observer selects, or is assigned a course and instructor to observe.
    - Observer thoroughly reviews lesson plan and informs instructor of pending observation date.
    - Observer sits in on class, and completes a Class Observation rating/feedback form. Form would include sections such as presentation style, rapport and communication with students, content knowledge - and whether content and examples are current, etc.
    - Observer meets with instructor to give feedback on lesson plan and class.
    - Each instructor would have a minimum of one course observation per cadet class. This class observation form could/would be used by supervisor to inform the Instructor's evaluation (SSPR) ratings, as this is an indicator of Teaching Effectiveness.
- As part of the Teaching Excellence program, create incentives for instructors whereby results of various assessments including class observations designate high performers to be publicly recognized. Examples: Instructor of the Year recognition, specific lapel pins for academy instructors, certificates of recognition signed by the Chief, recognition on website.
- Develop yearly Continuing Education credit courses specifically for professional development in Teaching.
- Partner with local colleges/university's Teaching Excellence programs to access Teaching resources, symposia, workshops, etc.

Instructor responsibilities on course content:

- Before teaching any course, instructors should review the course material, investigate any possible updates to course content (including any new legislative changes and/or research findings), and have a firm understanding of content being covered. This is particularly important for any instructor teaching a new course and/or teaching new content. (It is presumed that all instructors will have taken the most current Basic Instructor course, as required by TCOLE).
- After reviewing content, instructors should make any changes and updates necessary to material to be presented (minimum: lesson plans, slides, handouts) based on legislative or research updates. It becomes obvious when instructors use the same Power Point slides, same handouts, same exam questions that have been used and re-used for years. At minimum, even when no legislative or research updates are warranted, instructors should update handouts, slides, video clips to stay current and relevant.
- All instructors should be informed that they will be observed by a peer, and should be shown the evaluation form to be aware of expectations in their teaching in their overall performance review.

Threats

Threats in the context of SWOT analysis refer to elements in the environment that could cause issues for the organization. The elements briefly described below can impede the APD Training Academy's strategic goals. These and others should be considered more thoroughly, but are briefly mentioned here.

- Sociopolitical climate/Political unrest
- Negative police-community relations
- Shortage of recruits
- Economic/Financial/Budgetary constraints
- Internal morale
- Internal discord
- Negative perceptions by public/media
- Lack of real or perceived support

Strategic Plan

Taking all information into consideration, while looking to the future to make the Austin Police Department Training Academy worthy of exemplary status, below is a proposed strategic plan outlined for consideration. Note that this is an initial draft of the plan that with assistance from APD leadership and approval from City Manager, would be fully developed to include a detailed timeline, short- and long-term goals, yearly objectives, action, and assessment plans.

2020 strategic plan

Austin Police Department Training Academy

MISSION

The Austin Police Department Training Academy promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships.

VISION

To build and educate the finest police officers in the nation.

Purpose

Our purpose is to meet the needs of our community by providing the highest quality education to future officers. Contemporary policing requires contemporary training which incorporates Adult Learning (andragogy[1]) teaching principles while maintaining and reinforcing the community-oriented police services model.

[1] *the method and practice of teaching adult learners;*

Need #1: transformation of academy to move away from paramilitary training model to education model
Need #2: address community issues around Diversity, Equity, and Inclusion (DEI) concerns in training
Need #3: ensure all resources are available for instructors to reach teaching excellence

A New Environment

Training academies across the country are facing challenges in adapting to changing sociocultural and educational environments. While APD continues to lead the way for other departments, the training academy must make the necessary cultural shifts towards an education model to reinforce solid learning theories, adapt innovative teaching and learning strategies, and meet the demands of the new generation of student cadet.

Goal #1: introduce a cultural/paradigm shift for academy moving forward to reflect new directions in police academy training
Goal #2: provide instructors with effective professional development opportunities, feedback, and accountability plan to reach teaching excellence and include outside academics/civilians as academy instructors for some courses
Goal #3: continually innovate and evaluate to ensure cadets receive best education possible, focusing on critical thinking and problem solving, and preparing them for the challenges of modern, community-based policing
Goal #4: using the community-policing model, prepare cadets to communicate effectively, collaborate with community members, and embrace diverse perspectives when serving the Austin community

Investing in Our Future

While APD is not exempt from negative economic trends in the environment, one thing is certain: the long-term return on investing in the education of our future police officers is huge. By providing the necessary resources, instructors receive top notch professional development, cadets receive the best education resulting in long-term retention of important information, and the community benefits as a result.

Goal #1: increase budget to include upgrades in technology and training
Goal #2: increase investment in professional development programming to include pedagogical[2]/teaching resources
Goal #3: invest in Diversity, Equity, and Inclusion programming throughout curriculum

[2] *the method and practice of teaching, especially as an academic subject or theoretical*

Key Strategic Priorities

The four key themes identified in this Strategic Plan will guide our work for the next several years. These themes were generated inductively, based on operational observations, review of various bodies of literature, and the agility required by modern times to reach our objectives around educating the hearts and minds of future officers.

Cultural shift | Commitment to Diversity, Equity, & Inclusion | Academic Excellence | Resource Development

Strategic Initiatives

Drilling down, these initiatives will allow us to stay focused on the priorities that will guide our work.

- Transform para-military structure to Education/Adult Learning Model
- Emphasize Servant leadership & Guardian Model
- Clear & consistent communication/expectations
- Community-based curriculum
- Emphasize skills in Cognitive, Emotional, & Social areas
- Prioritize wellness throughout the curriculum
- Modern-day Policing

- Cultural competence assessments & development
- Incorporate implicit bias evaluations into recruitment process
- Infuse DEI programming throughout academy to include training for leadership
- Increase diversity in teaching faculty
- Implement recommended changes in teaching methods
- Implement recommended changes to course content
- Include simulations and role plays that pertain to difficult cultural or racial situations

- Review and revise Instructor position description evaluation
- Establish consistent onboarding process
- Regular class observations
- Set expectations and provide teaching resources, then hold accountable
- Reward excellence: either monetary and/or awards and recognitions
- Provide instructors time to develop courses
- Professional Development opportunities
- Partnership with local colleges/universities Teaching & Learning Excellence programs (attendance at yearly teaching symposium and access to resources)
- Civilianize some instructor positons for specific courses that require expertise in field

- Higher pay for prior education and incentive pay for instructors
- Establish instructor wellness program
- Prioritize tech upgrades to include LMS, Scheduling software, internal academy site
- Manage teaching load and establish equitable process of work distribution
- Select and train stellar Field Training Officers (FTO) to set good examples
- Improve cohesiveness between academy and FTO to ensure consistency in training
- Establish a Community placement opportunity for cadets to begin building relationships with community

References

Birzer, M.L. (2003). The theory of andragogy applied to police training. *International Journal of Police Strategic Management*, vol. 26.

Birzer, M.L. & Tanneill, R. (2001). A more effective training approach for contemporary policing. *Police Quarterly*, vol. 4 (2).

Birzer, M.L. & Tanneill, R. (2004). Andragogy: Student centered classrooms in criminal justice programs. *Journal of Criminal Justice Education*, vol. 15 (2).

Blumberg, X., Schlosser, X., Papazoglou, X., Creighton, X., & Kay, X. (2019). New directions in police academy training: A call to action. *International Journal of Environmental Research and Public Health*, vol. 16 (4941).

Chan, Devery, & Doran (2003). Fair cop: Learning the art of policing. *University of Toronto Press*.

Chappell & Lanza-Kaduce, (2010). Police Academy Socialization: Understanding the Lessons Learned in a Paramilitary-Bureaucratic Organization. *Journal of Contemporary Ethnography*.

Conti, (2011). Weak links and warrior hearts: A framework for judging self and others in police training. *Police Practice & Research*, vol. 12 (5).

Kringen, A.L. (2019). Females and the police academy. *The Encyclopedia of Women and Crime*.

Kringen, A.L. & Novich, M. (2017). Is it 'just hair' or is it 'everything'? Embodiment and gender repression in policing. *Gender, Work & Organization*, vol. 25 (2).

McGinley, B., Agnew-Pauley, W., Tompson, L., & Belur, J. (2019). Police recruit training programmes: A systematic map of research literature. *Policing*, vol. 0 (0), pp. 1 24.

Perez McCluskey, C. & McCluskey, J.D. (2008). Diversity in Policing: Latino representation in law enforcement. *Journal of Ethnicity in Criminal Justice*, vol. 2 (3).

Sanburn, J. (2016). The woman who is restoring order to law. *Time*, October, 13, 2016.

Schlosser, M.D. (2013). Training adults to become police officers at the University of Illinois Police Training Institute. *Law Enforcement Executive Forum*.

Schuck, A.M. (2016). Citizen complaints and gender diversity in police organisations. *Policing and Society: An International Journal of Research and Policy*, vol. 26 (8).

Schuck, A.M. (2017). Female officers and community policing: Examining the connection between gender diversity and organizational change. *Women & Criminal Justice*, vol. 27 (5).

Silvestri, M. (2019). In search of diversity: An embodied account of police leadership. *Police Leadership* (pp. 99-120).

Stoughton, S. (2015). Law enforcement's "warrior" problem. *Harvard Law Review*, vol. 128.

Todak, N. (2018). Investigating perceptions of race and ethnic diversity among prospective police officers. *Police Practice and Research: An International Journal*, vol. 19 (5).

Case No. 1:22-cv-655

COMPLAINT
EXHIBIT B

MEMORANDUM

TO: Mayor and City Council

FROM: Brion Oaks, Chief Equity Officer

THRU: Nuria Rivera-Vandermyde, Deputy City Manager

DATE: December 29, 2020

SUBJECT: Equity assessment SWOT analyses and report on racial inequities within Austin Police Department

The purpose of this memo is to provide a brief overview of two bodies of work documenting racial inequities within the Austin Police Department (APD). The first body of work contains a series of evaluations of seven division-level equity assessment responses and the Strengths, Weaknesses, Opportunities, and Threats (SWOT) identified by a third-party evaluator, The Peace Mill Research and Communications.

The second body of work is a report prepared by Joyce James Consulting to help identify racial inequities within APD and develop immediate and prolonged strategies to eliminate them. Key components of the scope of work addressed by this report include a documentation review relevant to APD and racial disparities; survey of the APD climate and culture including selected interviews; facilitation of the Groundwater Analysis® training and debrief for APD leadership; and collaboration with APD and the Equity Office to develop strategies and objectives based on the findings.

Background

In an effort to address racial inequity in Austin, City Council passed Resolution No. 20150507-027 in May 2015, which directed the City Manager to evaluate the impact of existing City policies and practices on racial equity and develop an Equity Assessment Tool to be used across City departments. The four sections of the Tool are designed to evaluate: Department Culture, Community Engagement, Budget, and Alignment with the Strategic Direction 2023. After a third-party evaluator develops a SWOT analysis based on responses to the Tool, the department reconvenes to develop an action plan with three to four interventions that they can implement within a year. It is designed to be a process of continuous improvement, with departments revisiting the Tool and developing new action plans every cycle.

In 2018, City Manager Spencer Cronk supported the expansion of departmental equity assessments and mandated that all City departments complete the process. The second equity assessment cohort included the Austin Police Department, an immense organization with 2,646 employees divided among 48 divisions. Due to the department's size and input from the community, the Equity Office determined that it would benefit the process, the community and the Police Department to directly engage community members and APD employees in a series of dialogues over several months as part of APD's equity assessment process.

In 2019, the Equity Office began engaging in this process with seven (7) divisions within the Austin Police Department. The divisions included in this pilot series were Training, Recruiting, Data Planning, Internal Affairs, Finance, Human Resources, and Victim Services.

After the equity assessment process, APD leadership identified the need for an additional process to dive deeper into the culture of the Department, as well as support identifying potential solutions to address equity concerns. After consultation with the Equity Office, APD identified Joyce James Consulting, who worked in collaboration with the Office to draft and plan a broader cultural assessment and intervention process.

Overview of Equity Assessment Process and SWOTs

As part of the City's equity assessment process, APD staff and officers, community leaders, and Austin residents gathered together for a series of dialogues in 2019, during which community members could engage directly with APD representatives. The discussions centered around each division's responses to the Equity Assessment Tool and were designed to add a level of community accountability to the equity assessment process.

Representatives from each division responded to community members' questions, which were generated in response to answers from APD's equity assessment. After division representatives answered initial questions, community members and APD engaged in dialogue to clarify answers, seek and provide further information, and address community concerns related to each division's responses.

The third-party evaluator analyzed the process to identify promising practices and areas for improvement, interviewed participants from APD and the community, and analyzed all departmental responses through a SWOT analysis.

Some notable findings include:

- Erosion of community trust
- Practices and procedures that contribute to a culture of fear
- Incomplete data collection and analysis
- Failure to codify equity standards
- Lack of institutional and individual understanding among leadership with regard to principles of equity and inclusion

Overview of Report on Racial Inequities and Institutional Racism
The report produced by Joyce James Consulting (JJC) provides key findings, recommendations and responses to the JJC team's review of multiple reports related to racial inequities that exist in the culture of APD, and the impact on internal and external stakeholders. The findings informed the recommendations and beginning road map, that if implemented, have implications for beginning a journey towards creating an APD anti-racist institutional culture.

Some of the recommendations include:

- Develop an understanding of the history of institutionalized racism and its impact on poor communities and communities of color.
- Utilize training defined by anti-racist principles and embed that in cadet academy and leadership development.
- Create a clearly defined roadmap with appropriate metrics, benchmarks, and milestones that define and gauge progress towards antiracism.
- Demonstrate transparency in regularly communicating with internal and external stakeholders.

Next Steps
The Equity Office staff will follow up with APD division leads in January and February to discuss the next steps of the equity assessment process which includes developing an equity action plan with specific interventions to address areas featured in the SWOTs.

If you have any questions, please contact Brion Oaks, Chief Equity Officer, at Brion.Oaks@austintexas.gov or 512-974-7979.

Attachments: Community + APD Equity Assessment Series: Austin Police Department
Training and Recruiting Division
Data Planning Division
Internal Affairs and Professional Standards Division
Finance Division
Human Resources Division
Victim Services Division
Community Engagement Process Evaluation and Recommendations
Racial Inequities and Institutional Racism: A Report Submitted to The City of Austin Equity Office and The Austin Police Department

cc: Spencer Cronk, City Manager
Rey Arellano, Assistant City Manager
Christopher Shorter, Assistant City Manager
Brian Manley, Chief, Austin Police Department
Troy Gay, Assistant Chief, Austin Police Department
Farah Muscadin, Director, Office of Police Oversight
Devin Desai, Chief Labor Relations Officer, Labor Relations Office
Lee Crawford, Division Chief, Law Department

Community + APD Equity Assessment Series:
Austin Police Department, Training and Recruiting Divisions

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Executive Summary**
4	**Research Methods**
5	**Background: Equity Office and Equity Assessment Tool**
7	**Analysis of APD Data on Training Academy Outcomes**
10	**Data Visualizations: APD Graduating Classes by Race and Gender**
13	**Community Concerns and Response to Equity Assessment Results**
13	**Lack of Commitment to Equity Principles and Equity Analysis Process**
14	**Training Materials Create Significant Community Concerns**
14	**Qualitative Interview Findings: Dangerous, Inequitable Practices at APD Academy**
15	**Evidence Supporting the Redesign of APD Training Academy and Training Division**
18	**Recommendation: Redesign and Rebuild APD Training Academy and Training Division**
20	**SWOT Analysis: Training Division Equity Assessment Responses**
24	**SWOT Analysis: Recruiting Division Equity Assessment Responses**
29	**Community Response: Recruiting Division Assessment Responses**
30	**Conclusion, Context, and Insights**
32	**Appendix 1: APD Injury Data**
33	**About the Researcher**

Executive Summary

This report assesses the standards and practices related to diversity, equity, and inclusion at the Austin Police Department Training and Recruiting divisions. In 2015, the City Council directed the City Manager to begin a process that evaluates the impact of City policies, projects, and initiatives on racial equity in Austin.[1] As part of the equity assessment process, an independent researcher is tasked with assessing the departments, responses, collecting supplemental data, conducting interviews, and providing an extensive analysis of each department and division's equity practices to inform any subsequent equity action plans and support the department as it seeks to strengthen its equity practices and standards.

During this assessment, an independent researcher reviewed the APD Training division's self-assessment responses; conducted qualitative interviews with APD division leaders, former training academy cadets, community leaders, and Austin residents; analyzed APD Training division data, including information on recruitment, graduation rates, and injuries; and provided an analysis of the divisions' strengths, weaknesses, opportunities, and threats (SWOT analysis) related to diversity, equity, and inclusion.

This assessment found significant racial and gender disparities in the standards and practices of APD's Training and Recruiting divisions. The Training division's leadership failed to produce any measurable standards for ensuring equitable practices. The division's self-assessment identified one Black employee out of 57. Data provided by APD highlighted further disparities in graduation rates, with 81.6% of white male cadets graduating the academy compared to 48.5% of Black male cadets. Over five years, Black cadets accounted for only 5.19% of all academy graduates and were more likely to leave the academy or sustain an injury than any other racial group. All racial groups, other than white cadets, were underrepresented in graduating cadet classes. While the Recruiting division has taken the recent step of hiring a staff member to address racial disparities in the recruiting process, the number of Black, Latinx, and women cadets recruited into APD's cadet remains glaringly low. The number of cadets from these communities who graduate from the academy is even lower. This holds true for every racial group except for white cadets.

[1] Austin City Council Resolution 20150507-027

Interviews with former cadets revealed an academy culture that prioritizes physical aggression above all else. Multiple cadets stated that training staff subjected them to hours of grueling physical and psychological stress drills, refusing water to dehydrated cadets and engaging in other dangerous practices. This assessment details those practices and provides a complete analysis of APD Training division data. This report recommends that City leaders suspend all cadet classes until APD leadership and Equity Office officials can develop and implement an equity-driven action plan that reforms and rebuilds APD's Training division, including the training academy.

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third-party independent researcher to analyze responses submitted by each APD division during the equity assessment process and make recommendations for strengthening diversity, equity, and inclusion commitments within the department. The researcher employed a series of methods for collecting and analyzing data for this report, including:

- desk research, including the following:
    - reviewing the division's Equity Assessment Tool self-assessment responses
    - equity-related data related to the division's practices, such as race and gender data
    - additional data and evidence as needed and available
- qualitative interviews with a collection of stakeholders, including:
    - APD division leaders
    - Community leaders and residents
    - Former APD academy cadets
- quantitative analysis of APD data on cadet classes

The researcher used these methods to conduct an analysis of diversity, equity, and inclusion (DEI) standards and practices within APD's training division. This report contains those analyses, including an analysis of the division's strengths, weaknesses, opportunities, and threats (SWOT analysis) regarding diversity, equity, and inclusion. The report concludes with a recommendation section and commentary that addresses the training division within the context of broader reform efforts and current events related to policing and DEI reforms.

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[2] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity

[2] Austin City Council Resolution 20150507-027

Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step toward implementing those principles.

Analysis of APD Data on Training Academy Outcomes

In response to a request from the researcher conducting this assessment, the Austin Police Department provided data on a series of outcomes and other variables of interest related to the APD training academy between 2015 and 2020, including:

- Demographic data on APD cadet classes
- Graduation rates of cadets
- Reasons for voluntary or involuntary termination
- Comprehensive data on injuries sustained by cadets during training

Equity Limitations of APD Demographic Data Collection Methods

For the purposes of conducting an equity assessment, it is encouraging when any public institution collects demographic data. The APD data is helpful for some analysis, but it should be noted that there are several limitations caused by the format of the demographic data that APD collects:

1. Binary gender: APD's intake forms for cadets only allow a binary male/female option. This is an outdated approach to collecting gender data that discriminates against individuals who are non-binary, transgender, gender fluid, or who do not otherwise identify as male or female.

2. Limited categories for race: APD's intake forms allow cadets to identify as one of four races/ethnicities: White, Black, Hispanic, or Asian. This is an incredibly limited and outdated format for collecting race/ethnicity data that omits and discriminates against individuals who identify as Indigenous, Middle Eastern/North African, Latina/Latino (different than Hispanic), bi-racial or multiracial, or who otherwise identify as a race or ethnicity other than the four options provided on APD's intake forms.

Assessment of Data on Graduation Rates

Between 2015 and 2020, at least 638 cadets were recruited into APD's training academy. Of those 638 cadets, 464 (72.73%) graduated from the academy.[3] Due to errors in the demographic data provided by APD to the researcher conducting this analysis, data from the 38th cadet class was omitted from some of the demographic analysis in this study (see footnote 2). The sample used for this analysis of graduation rates includes twelve complete cadet classes, including 443 graduating cadets. Of the 443 cadets who graduated from the academy and were included in this equity analysis, 309 (69.75%) were white, 92 (20.77%) were Hispanic, 23 (5.19%) were Black, and 19 (4.29%) were Asian. Of a sample of 148 cadets who did not graduate and left the academy either voluntarily or involuntarily, 89 (60.14%) were white, 31 (20.95%) were Hispanic, 22 (14.86%) were Black, and 6 (4.05%) were Asian. The overall graduation rate for APD training academy cadet classes between 2015 and 2020 was 77%. However, when disaggregated by race and gender, the graduation rates highlight yet another significant inequity in APD's training division. During the same period, the graduation rates for APD cadets, disaggregated by race and gender, were as follows:

Figure 1. APD Training Academy Average Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[4]

Source: APD Data provided upon request by the researcher

[3] APD provided graduation data from 2015-2020, from the 130th through the 142nd cadet classes. Errors were discovered in the data for the 138th cadet class, so that data has been omitted from the demographic sections of this analysis. The class size was small and the omitted numbers do not shift the overall quantitative findings of this report. When updated data is provided by APD, this report will be updated to reflect those numbers.

[4] Over five years, APD only recruited one Asian woman, who successfully completed the academy.

APD's data on its cadet classes illustrates an all-too-common occurrence among municipal police agencies across the US: their ranks do not reflect the makeup of the community they are sworn to serve and protect. According to the U.S. Census Bureau population estimates for 2019, Austin is a "majority minority" city.[5] 48.3% of Austin's residents are white (non-Hispanic). 34.3% are Hispanic, 7.8% are Black, and 7.3% are Asian. Although APD does not provide more than four racial categories in its data, the census also identifies 0.6% of Austin's population as American Indian and Alaskan Native and 3.3% as two or more races. This data shows that the racial demographics of APD's graduating classes differ starkly from the demographic makeup of Austin as a city.

Assessment of Data on Injuries Sustained by APD Cadets

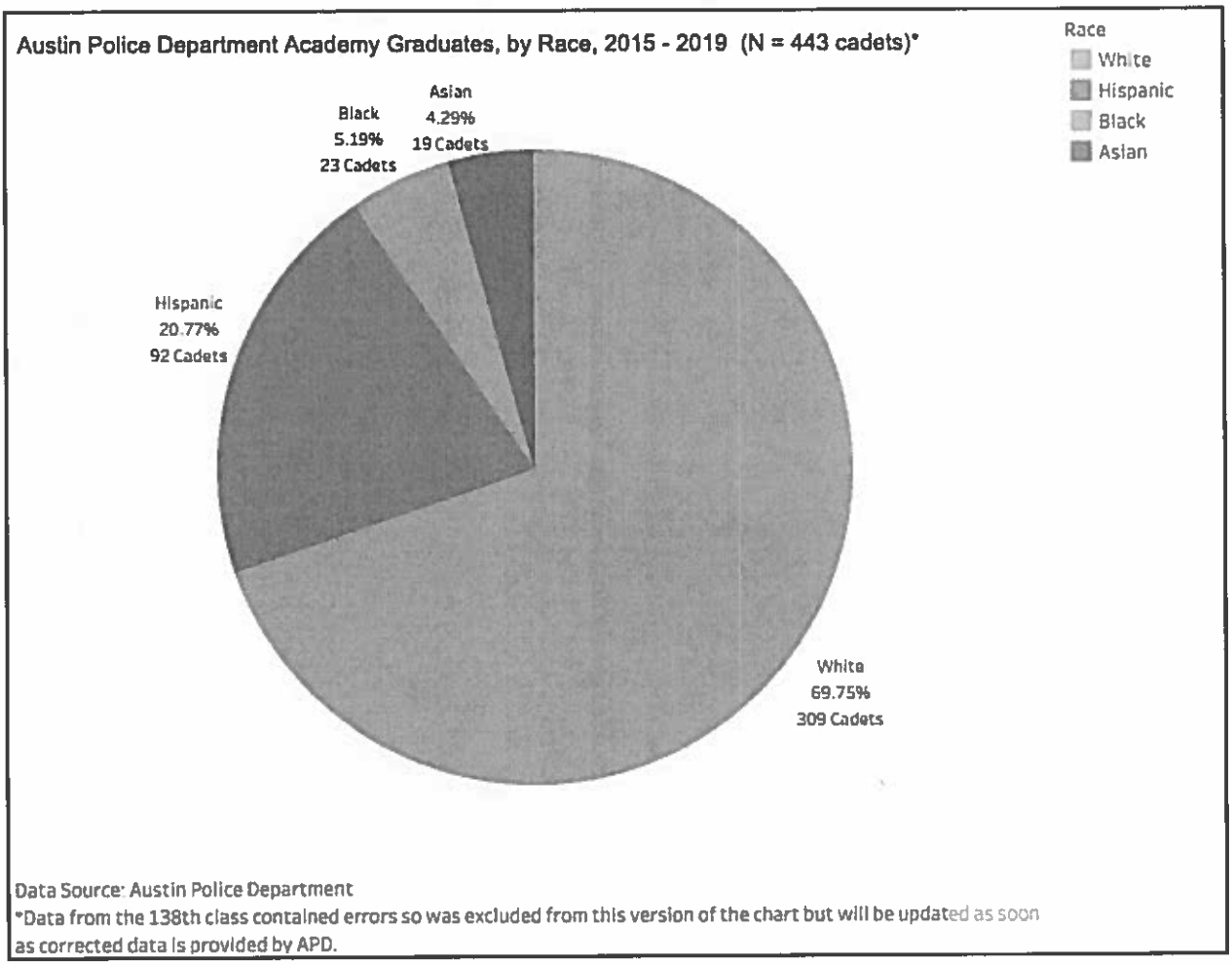
According to data provided by APD, at least 509 injuries occurred during the APD training academy between 2015 and 2020. Of the cadets who were injured and included in this data, 348 (68.37%) were white, 85 (16.7%) were Hispanic, 57 (11.2%) were Black, and 19 (3.73%) were Asian. While the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%). APD's data illustrates inequitable outcomes for Black cadets who enroll in the APD training academy. Black cadets in APD's training academy are underrepresented when compared to the population of Austin, less likely than their peers to graduate from the academy, and more likely to be injured during APD's training academy than any other race.

[5] While the term "majority-minority" is itself problematic, we employ it here to illustrate that even by an inaccurate and inequitable census bureau's standards, APD's graduating classes do not reflect the city's population; US Census Bureau 2019 population estimates for Austin can be found at https://www.census.gov/quickfacts/fact/table/austincitytexas/LND110210.

Data Visualizations: APD Graduating Classes by Race and Gender

The following data visualizations illustrate the race and gender of APD's academy graduates. The data used to construct these visualizations was provided by APD's Chief Data Officer and contain cadet data for from 2015 to 2020. The data includes the 130th through 142nd APD cadet classes.[6]

Figure 2. APD Academy Graduates by Race



[6] Errors were discovered in the data from the 138th cadet class. Therefore, that class was omitted from these visualizations. The 138th cadet class was relatively small, and the omission of that data does not alter the quantitative findings of this analysis. The report will be updated when the corrected data is received from APD.

Figure 3. APD Academy Graduates by Race, 2015 - 2020 (Men)

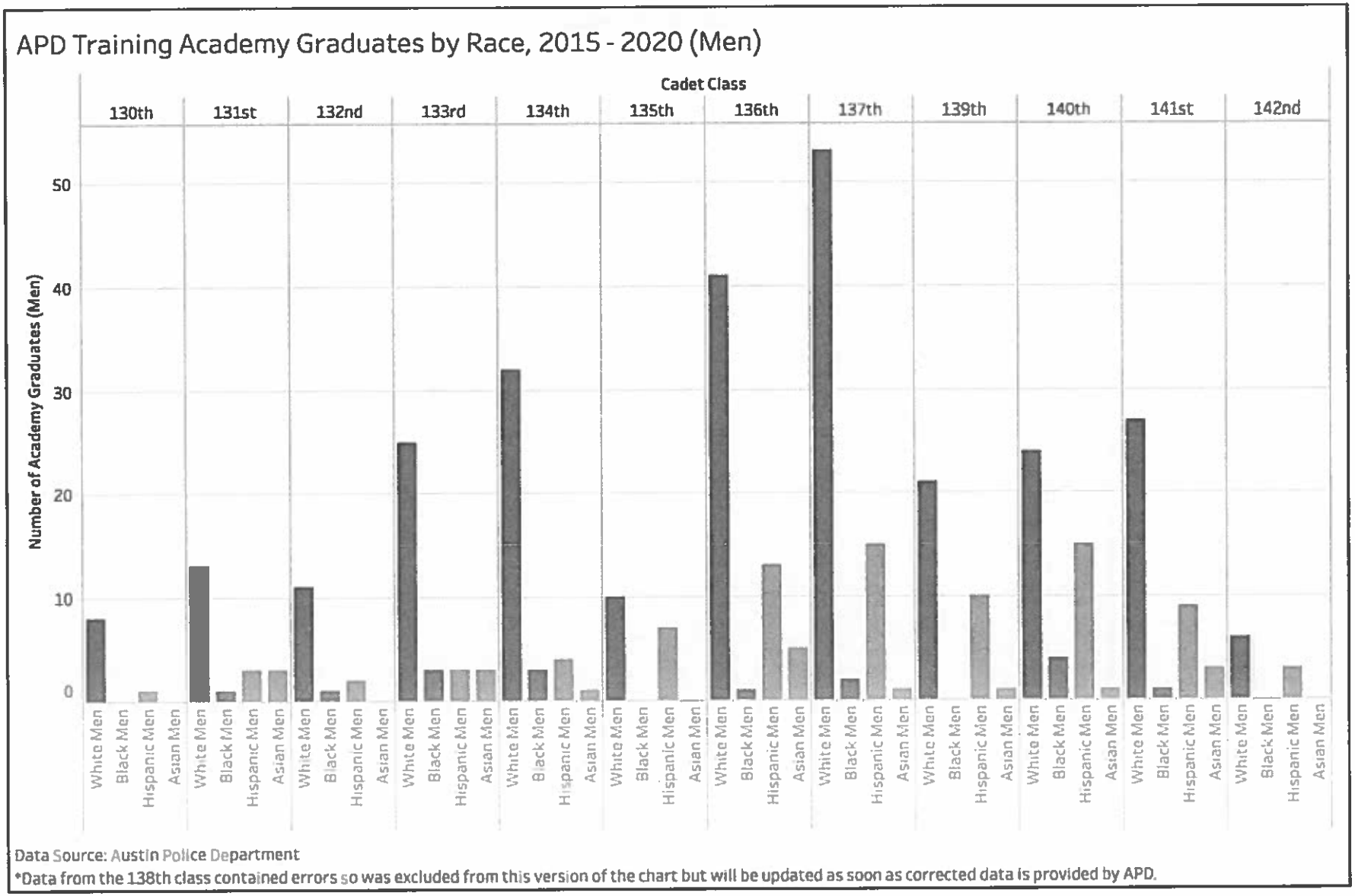
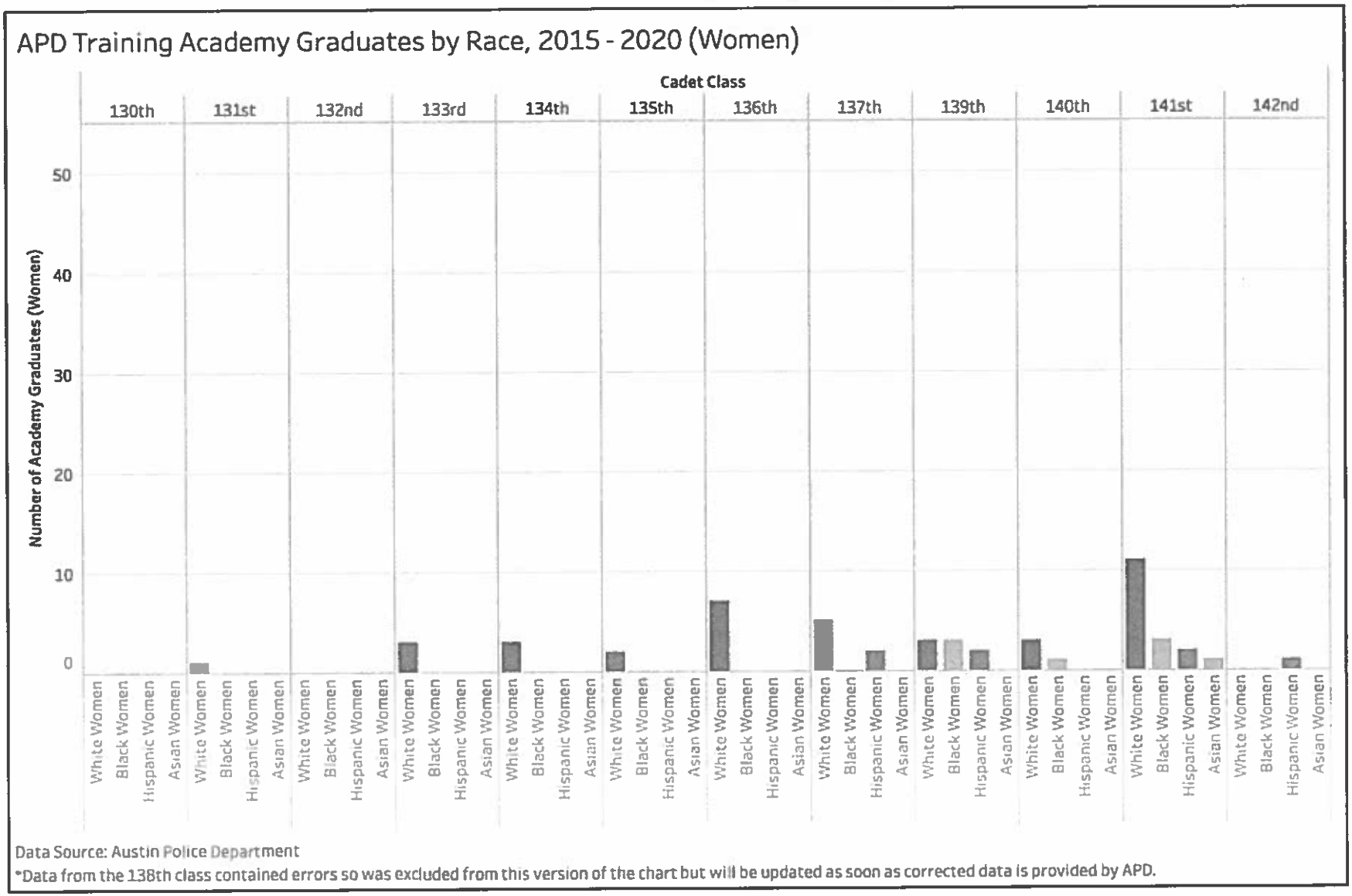


Figure 4. APD Academy Graduates by Race, 2015 - 2020 (Women)



Community Concerns and Response to APD Equity Assessment Results

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During interviews, community members expressed disappointment with the Training division's equity assessment responses. Community members cited many concerns, including the division's general lack of commitment to equity principles, lack of specific goals for improving equitable outcomes and inability to account for underrepresentation of women and communities of color among graduating cadet classes. Community members expressed frustration at de-escalation training materials that included language and images that were insensitive to women and communities of color and inaccurate depictions of the public as increasingly hostile and generally disobedient. Community members expressed overwhelming support for urgent reforms to APD's training standards, as well as department-wide reforms and renewed commitments around equity, diversity, and inclusion.

Lack of Commitment to Equity Principles and Equity Analysis Process

In many interviews with community members who participated in the C+APD meetings, participants expressed frustration at what they perceived as a lack of commitment to equity principles and the equity analysis process in general. Community members perceived APD's training division representatives as defensive when asked questions about race and gender demographics of cadets. Community members perceived the body language, behavior, and responses of training division representatives as defensive as well. These concerns were shared by other APD representatives present at C+APD meetings, who acknowledged in evaluation interviews that some of their APD colleagues were unnecessarily defensive and resistant to community questions about training procedures and materials and equity standards.

Training Materials Create Significant Community Concerns

Community members raised additional concerns at the depiction of an increasingly hostile and aggressive public in APD training materials. Community members expressed concern that this message will only make officers more violent and aggressive when they interact with the community. The APD training curriculum received significant criticism from community members, who expressed outrage at certain segments in APD's de-escalation training videos that were incredibly offensive to Black women.

Qualitative Interview Findings: Dangerous, Inequitable Practices at APD Academy

During interviews conducted as part of this assessment, multiple cadets alleged that the APD training academy fosters a dangerous and ineffective learning environment that discourages, degrades and injures highly qualified candidates, many of whom decide to resign for fear of permanent physical or mental injury. According to multiple former cadets who attended recent academies, cadets are subjected to counterproductive and excessive bouts of physical punishment in the form of "smoking sessions."[7] Multiple former cadets explained in separate, individual interviews that the academy's educational elements and academic presentations are regularly interrupted by unscheduled psychological stress drills, making it difficult to absorb important intellectual material and creating an unstable, stressful academic environment.

Multiple former cadets expressed concerns that training division staff foster a culture of violence, embracing brutality over wisdom throughout the academy experience.[8] Multiple cadets expressed concern about training staff promoting rhetoric that is antagonistic toward individuals

[7] Former cadets described "smoking sessions" as extended physical endurance drills that are separate for planned physical exercises. According to multiple interviews, these sessions are unscheduled and designed purely as punishment for a variety of offenses. Multiple former cadets explained that they often were unsure of the cause of each smoking session, but that training staff indicated that the sessions were the result of some individual or collective error.

[8] The term *culture of violence* describes institutionally imposed conditions that "can be used to justify or legitimize direct or structural violence" (Johan Galtung, "Cultural Violence," *Journal of Peace Research*, August 1990). In multiple interviews, cadets confirmed the narrative that an APD trainer asked a new cadet why they wanted to be a police officer, interrupting the cadet's response by saying "If you tell me you want to help people, I will punch you in the face." Combined with other incidents, including deprivation of water by trainers during physical drills in the summer heat, and other comments from training staff identified during interviews, the qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied.

experiencing homelessness.[9] The academy's training staff employ dangerous training tactics that have been described by cadets with military backgrounds as "worse than anything I went through in [US military training]." Multiple former cadets allege that the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation. The Training division's practices and culture are driving highly qualified candidates to leave the academy, depriving Austin of the diverse, community-driven police force that City leaders and residents envision.

Amid numerous valid concerns over secretive testing practices, unsafe physical tests that violate APD's own policies, racist and sexist language by instructors, physical abuse by instructors, forced resignations, suspicious injuries, inequitable employment outcomes, and an increasingly toxic training culture driven by a militarized "us versus them" mindset, City and APD leaders should rebuild the training academy and implement sweeping structural reforms to the training division. To honor the City and APD's commitment to a safer Austin for all Austinites, these reforms should include measurable changes to the culture, curriculum, staffing and leadership in APD's Training division.

Evidence Supporting the Redesign of APD Training Academy and Training Division

As part of the ongoing equity assessment mandated by Austin's community leaders, the City Manager and City Council, each division at APD conducted a self-assessment and submitted responses via the City of Austin Equity Assessment Tool. APD's own responses illustrate a training division devoid of equity standards. At the time of the self-assessment, APD's training division reported that one (1) of its 72 employees is Black. 70% of the division's employees were white. Further, the training division's self-assessment did not identify any codified standards for ensuring equitable hiring practices or decision-making processes.

During this ongoing independent evaluation of APD's Training division, the researcher has conducted interviews with many former APD academy cadets. These individuals provided a unique perspective on APD's training methodology and narrated corresponding accounts of

[9] Multiple former cadets in separate, individual interviews confirmed that training staff made negative comments toward individuals experiencing homelessness and told cadets that if they are "having a slow day," they could seek out someone experiencing homelessness as an easy target for various citations.

deeply troubling incidents that deserve a transparent and thorough investigation. These allegations and supporting evidence raise concerns that the APD Training division, operating without civilian oversight, is undermining the stated equity goals of the police department, and trainers in the academy are using violent tactics to target and expel the very candidates that the department desires in its ranks. Recent reports from sources including the Office of Police Oversight and APD's own internal investigator offer even further evidence that there are serious gaps in the department's attempts to address racism and inequity in policing.

The researcher requested APD data through the Equity Office and other City intermediaries on cadet injuries, including the number of injuries sustained during cadet classes, whether those injured cadets resigned or graduated, the type of injury sustained, and the race and gender demographic information for injured candidates. In its own self-assessment, APD's Training division listed race and gender among the demographic data collected on cadets, providing a racial breakdown of current cadet and sworn officer personnel. APD provided the data requested, and an analysis of that information is detailed in a separate section of this report titled "Analysis of APD Data on Training Academy Outcomes."

According to interview respondents, many of the academy's trainers rely overwhelmingly on "violent", "brutal", "traumatizing" practices designed to "manufacture soldiers" rather than produce community-driven law enforcement professionals adept at de-escalation. Trainers place cadets in dangerous, demoralizing, and inhumane exercises with "zero regard for the health and safety of cadets." Multiple cadets stated that they and their colleagues had been screamed at or punished for checking on one another or drinking water during intense physical drills, which last for hours in sweltering summer heat. Multiple cadets confirmed that they were deprived of water during extended physical drills in extreme heat. Data provided by APD confirms that a troubling number of cadets were treated for heat exhaustion and dehydration during the academy. Multiple cadets expressed that even though they hydrated heavily at home, as advised by APD training staff during orientation, it was impossible to avoid dehydration when training staff refused to allow them water during these extended physical drills. Cadets could not identify a plausible real-world scenario during which they would be deprived of access to water in extreme heat for extended periods of time. Multiple cadets expressed that this deprivation was rooted in nothing

more than cruelty and had no basis in the reality faced by police officers. Some narratives, corroborated by multiple respondents, are simply too violent to understand how they were ever allowed to occur, including many cadets being forced to resign or risk serious injury in the face of seemingly endless "hazing" and "abuse." The descriptions provided during interviews of injuries caused by APD trainers are equally disturbing. Allegations of anti-homeless, racist, and sexist remarks and other forms of targeted harassment toward cadets and others should not be ignored and deserve further investigation.

Recommendation: Reform and Rebuild APD Training Academy and Training Division

City and APD leaders should work together with community leaders to reimagine, redesign and rebuild the APD Training Academy and Training Division. APD is simply not graduating diverse cadet classes. Further, interviews conducted as part of this research and recent media coverage point to a pattern of dangerous practices during cadet classes. Multiple interview respondents pointed to *smoking sessions*, which are unscripted, unscheduled physical and psychological stress drills that instructors instigate without notice. According to multiple interviews, these *smoking sessions* are often used as collective punishment for individual violations, though their use is just as frequently unexplainable. Some respondents indicated that Training division staff seemed to enjoy putting cadets through the stress drills, which often go on for hours during the summer heat. Multiple respondents claimed that cadets are refused water during these stress drills, that instructors punish cadets for looking at one another (even if checking the condition of fellow cadets), and that medical staff are not posted close enough to the cadets to assess symptoms of dehydration or heat stroke. Multiple respondents witnessed instructors refuse water and fail to render aid to cadets who were visibly suffering symptoms of dehydration. It is well-documented that these practices resulted in multiple serious injuries to cadets.

Until this culture of violence is no longer the driving force behind APD's training methodology, the department will not be able to deliver on its promises of equitable service provision to the residents of Austin. What benefit is it to eliminate brilliant candidates for the sake of maintaining a battlefield mindset? How much money is spent recruiting these bright, capable, highly-educated, successful and *diverse* candidates, bringing them through a months-long recruiting process, vetting them intensely, dedicating an unknown number of personnel hours to interviews and investigations -- only to have them driven out of the academy by a culture of brutality, militarism and violence? What benefit is it to subject highly-qualified, diverse, committed cadets to training that is more intense than some military training programs? The culture of the APD training academy, detailed firsthand by the courageous respondents who were interviewed for this research, conflicts directly with the department's recruiting and public relations campaigns, which proclaim a police department focused on diversity, equity and community engagement. APD's own data reveals repeated failures at achieving these goals.

Reforms to the training academy and training division should begin after the Equity Office's evaluation of the police department is complete and any subsequent action plans and reforms have been implemented with strong civilian oversight mechanisms. A recent series of equity assessment meetings between community leaders, residents, City officials and APD division representatives provided an uncommon and unorthodox opportunity for residents and APD leaders to engage with, educate, and learn from one another. The City and APD should use this model to reimagine, reform and rebuild APD's training division and training academy.

Departments, divisions, and actors that engage in discrimination and inequitable practices cannot be corrected or reformed simply by changing a script, adding a slideshow on diversity, or publishing a pamphlet with photos of Black employees on each page. Systemic change implies a full redesign and reconstruction of a failed system. Corresponding accounts by multiple cadets from multiple cadet classes indicate that any recent changes to APD's training curriculum have been, at best, superficial and that systemic flaws persist in the department's training protocols. Further interviews with APD division leaders from multiple divisions indicate that the department's commitment to the equity assessment process has been similarly superficial. Most division leaders received little guidance from APD leadership when engaging with the equity assessment. This means that division leaders, rather than department leaders, are conducting their division's equity analysis using disparate, ad hoc approaches. This renders the equity assessment process useless in divisions where leaders are not adequately equipped to address, or simply do not care about, racial or gender equity.

The City of Austin and APD made a commitment to foster a more diverse, equitable, safer Austin for all Austinites. Equity-focused reforms at the police department must be deep, cultural, universal, and backed with measurable indicators, public accountability mechanisms, and most importantly, community input. City and APD leaders should seize this opportunity to recommit to the principles of equity outlined in Council Resolution 66 and begin the important work of reimagining public safety by beginning where Austin's police officers are shaped: APD's training academy and the training division that administers it.

SWOT Analysis: APD Training Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects some demographic data on division staff Collects some demographic data on cadet classes	Lack of diversity among division staff Division does not analyze demographic data on contractors/consultants Division does not collect demographic data on racial disparities among client populations Division does not have strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for ensuring equitable practices
OPPORTUNITIES	**THREATS**
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of political will among APD leadership at many levels threatens meaningful change High-profile incidents resulting in civilian harm or death undermine community equity-driven reform efforts and further erode community trust in APD reform commitments Division training materials, including materials used in de-escalation trainings, contribute to culture of fear, mistrust between police officers and community members

Strengths

Collects some demographic data on division staff

Question 4:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response: These data are available through the Human Resources Department.
White (40) 70%
Black (1) 2%
Asian (4) 7%
Latino (12) 21%

2. Collects some demographic data on cadet classes

Question 9:
Provide the numerical breakdown (count) by race/ethnicity of the clients your department serves.

Division Response: HR does not keep race/ethnicity statistics for APD civilian employees other than cadets. The race/ethnic breakdown for sworn and cadets:
TOTAL = 1,901; White - 1,304; Black - 153; Hispanic - 393; Asian - 49; Native American – 2

Weaknesses

Lack of diversity among division staff

Question 4:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response: These data are available through the Human Resources Department.
White (40) 70%
Black (1) 2%
Asian (4) 7%
Latino (12) 21%

Division does not analyze demographic data on contractors/consultants

Question 5: Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response: These data are available through the Purchasing Department.

Does not collect demographic data on racial disparities among client populations

Question 11: Does your department collect data showing racial/ethnic disparities among the population you serve?

Division Response: No.

Division does not have strategies in place to ensure racial and thnic diversity of staff

Question 15: Does your department have strategies in place for ensuring racial/ethnic diversity of staff in recruitment and hiring processes?

Division Response: No.

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Question 20: How does your department measure the effectiveness of its training on equity and institutional racism?

Division Response: N/A

Does not provide any specific or measurable standards for ensuring equitable practices

Question 23: Does your department measure the effectiveness of its efforts to improve racial equity?

Division Response: No.

Opportunities

Development of concrete equity standards and assessment processes

Develop and implement training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaborate with Equity Office and Equity Action Team to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Lack of political will and/or commitment to principles of equity at any level of leadership can undermine the efforts of reformers within the department and partners in government and the community

High-profile incidents resulting in civilian harm or death undermine community equity-driven reform efforts and further erode community trust in APD reform commitments

Division training materials, including materials used in de-escalation trainings, contribute to culture of fear, mistrust between police officers and community members

SWOT Analysis: APD Recruiting Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Collects some demographic data on contractors and consultants Collects some demographic data on cadet classes Conducts some test monitoring during cadet testing to prevent observable biases Hired civilian recruitment coordinator whose tasks include monitoring racial and ethnic distribution of cadets	Incomplete demographic data collection: contractors, consultants Does not collect data on demographic disparities among served population Does not provide specific, measurable processes for ensuring racial/ethnic diversity of staff Does not provide division-specific training, orientation, or onboarding specific to critical race issues Does not provide division-specific equity training, does not collect data or perform assessments on impact of at-large trainings Does not provide any specific or measurable standards for ensuring equitable practices
OPPORTUNITIES	**THREATS**
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of political will among APD leadership at many levels threatens meaningful change Failure to codify equity standards and accountability mechanisms makes it difficult to measure progress over time External pressure from political actors weakens community trust in APD commitment to equity principles

Strengths

1. Collects demographic data on division staff (Q4)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response:
The Recruiting Unit currently has 27 employees (up to the rank of Commander). Whites make up 10 employees, African Americans make up 9 employees, and Hispanics make up 8 employees. This can be broken down further into 6 white males, 4 white females, 7 African American males, 2 African American females, 5 Hispanic males, and 3 Hispanic females.

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2. Collects some demographic data on contractors and consultants (Q5)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response:
Stats (actual count): Ethnicity Not Disclosed (89), White (68), Asian (7), Hispanic (4), African American (3), Native American (2). Total 173

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3. Collects demographic data on cadet classes (Q9)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the clients your department serves.

Division Response:
Data for the last two hiring cycles: 140th cycle count: American Indian - 5, Asian - 42, African American - 201, Hispanic - 536, White - 742, Other - 32. 141st cycle count: American Indian - 4, Asian - 34, African American - 91, Hispanic - 287, White - 405, Other - 24

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4. Conducts some test monitoring during cadet testing to prevent observable biases (Q22)

Question:
How does your department ensure departmental policies, practices, and programs do not adversely impact communities of color?

Division Response (excerpt):
During testing cycles, test scores of minority and women applicants are closely monitored to ensure that there is no evidence of adverse impact (4/5th's rule).

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5. Hired civilian recruitment coordinator whose tasks include monitoring racial and ethnic distribution of cadets (Q24)

Question:
Describe the methods of measurement used (e.g., surveys) and provide a few examples of measures you track (e.g., Increase outreach to X community by X%)

Division Response:
The Recruiting Unit is always striving to forward cadet classes to the academy that are reflective of Austin's diverse communities. We recently hired a civilian Recruitment Coordinator. Part of her job duties is to keep stats on the ethnic makeup of classes entering in the academy and look for any changes in the data. If any changes are noted, unit leadership looks into this further to see where we are losing minority applicants during the hiring process.

Weaknesses

1. Inconsistent demographic data collection for contractors and consultants (Q5)

Question: Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response: Stats (actual count): Ethnicity Not Disclosed (89), White (68), Asian (7), Hispanic (4), African American (3), Native American (2). Total 173

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2. Does not collect data on demographic disparities among served population (Q11, Q12)

Question: Does your department collect data showing racial/ethnic disparities among the population you serve?

Division Response: No, the Recruiting Unit does not.

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3. Does not provide specific, measurable process for ensuring racial/ethnic staff diversity (Q16)

Question: Provide those strategies, and if applicable, include the venues and organizations where outreach occurs.

Division Response: The Recruiting Unit is always striving to maintain a diverse workforce that reflects the ethnic make-up of APD as well as the citizens of Austin. As evidenced above, the unit is very diverse (almost 1/3 representation per ethnic group). All departmental officers, to include African American, Asian, and Hispanic officers, are encouraged to work with the unit on special assignments to learn about the inner workings of the unit and to participate in Phase 1 testing with the hope they will apply to the unit when a vacancy announcement is posted. Having a diverse workforce in the Recruiting Unit is very important as we work to increase the diversity within APD.

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4. Does not provide training, orientation, or onboarding specific to critical race issues (Q18)

Question: Does your department, on-board, orient, or train staff on critical issues related to equity and institutional racism?

Division Response: The Recruiting unit does not as a unit, but the department does offer various trainings on the topic through TCOLE mandated classes.

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5. Does not provide division-specific equity training, does not collect data or perform assessments on impact of trainings (Q20)

Question:
How does your department measure the effectiveness of its trainings on equity and institutional racism?

Division Response:
N/A

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6. Does not provide any specific or measurable standards for ensuring equitable practices (Q21)

Question: What are your department's greatest equity priorities? If they have not yet been formally established, take time now to think about and identify what equity priorities are most important to your department and include them here.

Division Response: The Recruiting unit strives to ensure that everyone who applies to be a police officer is treated fairly, professionally, impartially, and we are transparent with them throughout the hiring process. Members of the unit ensure that everyone who walks through our front door is treated the same. We are pulling for the applicants throughout the process and want everyone to succeed, as we need more officers on the streets to enhance community policing efforts.

Opportunities

1. Develop concrete equity standards and assessment processes.

2. Develop and implement training modules on critical race issues as part of recruiting, training, orientation and onboarding processes.

3. Collaborate with Equity Office and Equity Action Team to develop and implement specific accountability metrics for ensuring equitable practices.

Threats

1. Lack of political will and/or commitment to principles of equity at any level of leadership can undermine the efforts of reformers within the department and partners in government and the community.

2. Failure to codify equity standards and accountability mechanisms can make it difficult for internal and external evaluators to measure progress over time.

3. External pressure from political actors may threaten equity-driven initiatives and erode community trust in APD commitment to equity principles.

Community Response: Recruiting Division Equity Assessment Responses

The equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher. During interviews, community members expressed concerns over the Recruiting division's equity assessment responses. Community members cited a series of concerns, including the division's general lack of codified equity principles and lack of specific goals for improving equitable outcomes. Community members expressed overwhelming support for urgent reforms to APD's recruiting standards, as well as department-wide reforms and renewed commitments around equity, diversity and inclusion.

Conclusion, Context, and Insights

This report analyzes the responses provided by APD's Training and Recruiting Divisions to the City of Austin's Equity Assessment Tool and supporting evidence to evaluate each division's commitment to principles of equity. APD's Training Division does substantially less than most Austin divisions to advance the principles of equity. In fact, it is hard to identify any meaningful, measurable commitments to equitable outcomes when assessing the division's responses. The division's staff is not diverse and there are no specific or measurable standards for ensuring equitable practices in day-to-day operations. The academy continues to graduate cadet classes that do not reflect the communities most heavily policed by APD. Graduation rates for Black candidates are consistently lower than those of their white counterparts. Every racial group in Austin is underrepresented in APD's graduating cadet classes, except for white cadets, who are overrepresented when compared to the city's demographic makeup.

The lack of equity standards in the APD training division raises serious concerns that must be addressed by Austin city leaders, in consultations with community leaders, before commencing any new cadet classes. This is especially true considering the events that have unfolded in Austin this year, from the death of Mike Ramos to ongoing protests.

It is impossible to deliver this report without reflecting on the events taking place right now in cities across the United States, including Austin, in response to ongoing, systemic inequities and violence against Black, brown and poor communities by police forces; violations of international human rights standards by police forces; and the rapid militarization of local police forces. It is also essential that all parties reflect on the escalating police and military response to those demonstrations. Our communities, their governments, and their police agencies are at an important, historic decision point.

How can a community place trust in the commitments of APD leaders to *de-escalatory, anti-racist* training policies when its riot control officers are shooting unarmed Black demonstrators in the face at short range with rubber bullets and launching CS gas into crowds that include children and pregnant women? How does the community trust the commitment of police leadership to *de-escalatory, anti-racist* training policies when another unarmed Black man is

fatally shot by its officers in broad daylight in front of an exhausted community? How can community members build trust with police leaders who choose to leave as a unit during lunch at anti-racism workshops rather than break bread with the community members who have given their time freely to do the tremendous work of undoing systemic racism? Why does APD continually fail to graduate diverse cadet classes? These crucial questions arose from the community during interviews and conversations throughout this evaluation. Their honest criticisms provide critical citizen perspectives and a starting point for city leaders committed to building a more just and equitable Austin.

Appendix 1: APD Injury Data

Figure 5. APD Training Academy Injuries, 2015 - 2020

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	0
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	0
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	0
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	0
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	1
TOTALS:	**90**	**123**	**77**	**116**	**98**	**5**

Source: APD Data provided to the researcher by request

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Austin Police Department, Data Planning Division

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
4	**Community Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Develop and Implement Departmental Strategies and Requirements for Ensuring Equitable Outcomes in Hiring, Project Management, and Data Provision**
5	**SWOT Analysis: APD Data Planning Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with city departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Data Planning division has very few, if any, strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's knowledge of the principles of diversity, equity and inclusion. When asked about strategies for ensuring racial equity during the recruiting and hiring process, division leadership responded, "I'd prefer to hire diversity of thinking versus diversity of race," as if the two concepts are mutually exclusive. Division leadership did not provide specific, measurable practices or strategies related to equitable hiring practices. When asked to consider the relationship between the racial makeup of divisional staff and the community served by its work, division leadership responded, "I haven't thought about it to be honest. We do make efforts to have diverse hiring panels." While this intention is helpful and signals a willingness to learn, the division's responses indicate a general absence of specific strategies for ensuring equity in recruitment, hiring processes, community engagement, and other important areas.

The Data Planning division lacks specific strategies for ensuring equitable access to the data that it produces. While the division points to a large number of datasets offered through the City's Open Data Portal, the division's responses to the equity assessment tool indicate an absence of strategies for ensuring that data is accessible and understandable by Austin's residents. When asked about ensuring accessibility and understanding of its data, division leadership responded, "We don't have a process for determining reading level. All of our public facing documents are placed on either APD's public site or the City of Austin's Open Data Portal—I guess we assume since they can get to that, they have the ability to download, read, and consume our documents and datasets." This is precisely the type of assumption that inhibits widespread access and understanding of internal data. Government data is often written in language that is generally inaccessible to individuals without advanced knowledge of complex data, government jargon, and government processes. Division leadership goes on to say, "The number and complexity of our research projects, reports, and datasets has increased steadily over the past three years." This appears to be an admission of the complexity of the very data in question. The APD datasets available through the Open Data Portal contain variables and categories that are often undefined, and when asked during a meeting about a codebook for understanding the variable codings, which is not provided alongside the dataset online, division leadership provided a business card and instructed the researcher to send a request for the codebook directly through email. How is the average resident supposed to know the process for finding such a codebook? This lack of structured accessibility protocol inhibits residents from accessing and understanding the data provided by the division through the open data portal and would fail even the most basic test of transparency. Similarly, when addressing translation of data and reports into languages other

than English, the division fails to provide any evidence of active equity-driven strategies or protocols.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During qualitative interviews, community members expressed two primary concerns related to the Data Planning division: access to information and lack of translation. Community members expressed that they were unable to understand the process by which the division selects data for publication and unfamiliar with the process for accessing data on policing. For community members, APD data is difficult to understand, includes unexplained variables, and is written in the internal language of the Police Department, rather than language that is familiar to residents. Community members that participated in interviews believe that the division should make a stronger attempt to make data more accessible to individuals who are not well-versed in the language of the police department. Community members who participated in interviews also expressed frustration that APD data is not readily available in languages other than English. Community members correctly pointed out that negative outcomes related to policing are suffered disproportionately by communities of color, which includes immigrant communities. Community members expressed frustration that individuals whose primary language is not English seem overlooked by division leaders.

Recommendation: Develop and Implement Departmental Strategies and Requirements for Ensuring Equitable Outcomes in Hiring, Project Management, and Data Provision

APD's Data Planning division lacks clear and measurable strategies and protocols for achieving equitable outcomes. From hiring to data provision to community engagement, division leadership was unable to provide much evidence for a culture of diversity, equity and inclusion within the division. According to responses to the equity assessment tool, division leadership seems to rely on personal perceptions of diversity, rather than measurable, informed approaches to implementing equity standards. Division leadership should collaborate with the Equity Office

to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues.

SWOT Analysis: APD Data Planning Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Compiles data (including demographic data) on officer-involved shootings, traffic stops and other incidents that can be used for analysis by researchers, community organizations and members of the public Identifies the importance of improving gender-based data in self-assessment, although division systems at the time of self-assessment only recognized binary gender identity options (male/female) Attends and provides information at some community engagement events focused on equity-related issues	Lack of diversity among division staff Division does not provide demographic data on contractors/consultants or analysis of demographic data on contractors/consultants Division does not provide demographic data on racial disparities among client populations Division does not provide specific or measurable evidence of strategies to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for strengthening or ensuring equitable practices Does not provide evidence of efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Does not provide translation of public documents, datasets, or other information into languages other than English Does not collect client satisfaction data (including demographic data) Does not provide evidence of efforts to engage specifically with marginalized communities

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of institutional and individual understanding among division leadership with regard to principles of diversity, equity and inclusion Lack of coherent plan or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion External pressure from political actors weakens community trust in APD commitment to equity principles

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Compiles data (including demographic data) on officer-involved shootings, traffic stops and other incidents that can be used for analysis by researchers, community organizations and members of the public

Identifies the importance of improving gender-based data in self-assessment, although division systems at the time of self-assessment only recognized binary gender identity options (male/female)

Attends and provides information at some community engagement events focused on equity-related issues

Weaknesses

Lack of diversity among division staff

Division does not provide demographic data on contractors/consultants or analysis of demographic data on contractors/consultants

Division does not provide demographic data on racial disparities among client populations

Division does not provide specific or measurable evidence of strategies to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide any specific or measurable standards for strengthening or ensuring equitable practices

Does not provide evidence of efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Does not provide translation of public documents, datasets, or other information into languages other than English

Does not collect client satisfaction data (including demographic data)

Does not provide evidence of efforts to engage specifically with marginalized communities

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Lack of institutional and individual understanding among division leadership with regard to principles of diversity, equity and inclusion

Lack of coherent plan or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion

External pressure from political actors weakens community trust in APD commitment to equity principles

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Austin Police Department
Internal Affairs and Professional Standards Division

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Community and Staff Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Internal Affairs and Professional Standards Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with city departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable steps toward implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Internal Affairs and Professional Standards division has few strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's ability to implement principles of diversity, equity and inclusion. Unlike other divisions, Internal Affairs and Professional Standards sources its staff from active APD employees, specifically sworn officers. This system of staffing limits leadership's ability to access a diverse candidate pool and binds the division to the outcomes of APD's Recruiting and Training Divisions. If the Training Division, which fails tremendously to implement the principles of equity, does not graduate diverse classes from its academy, Internal Affairs is, by extension, prohibited from accessing a diverse candidate pool. Perhaps more than any other example, this highlights the need for deep and systemic changes at APD.

Division leadership seems aware of the importance of diversity, equity and inclusion, but responses to the equity assessment verify that this awareness is not supported by systemic measures that ensure equitable outcomes. Division leadership points repeatedly to its relationship with the Office of Police Oversight, which should be supported and strengthened. Without internal processes and systemic changes, the partnership between IA and the OPO alone cannot fully address the division's inability to institutionalize the principles of diversity, equity and inclusion.

Community and Staff Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During qualitative interviews with community members, respondents expressed concern at the staffing system employed by Internal Affairs and Professional Standards. Similar concerns were expressed by an APD division leader interviewed as part of this evaluation. Respondents are concerned that the practice of rotating officers in and out of Internal Affairs incentivizes officers to "go easy" on their counterparts under investigation, either out of a sense of loyalty or a fear of retaliation. APD staff who expressed concerns over this issue identified the paramilitary nature

of the police department as promoting a culture of loyalty over principle. If officers are incentivized, or intimidated, to embrace loyalty, the department's stated commitment to creating more equitable outcomes will likely fail. Organizations that state commitments to equitable outcomes must prioritize those principles and implement organizational changes that prioritize those commitments and protect their underlying principles.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Internal Affairs and Professional Standards division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division does not have clear strategies that foster a diverse and inclusive environment. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing a long-term action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Internal Affairs and Professional Standards division can begin to address its shortcomings and take measurable steps toward building a culture of diversity, equity and inclusion within its ranks.

SWOT Analysis: APD Internal Affairs and Professional Standards Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Collects and provides demographic data on contractors/consultants Division consults with the Office of Police Oversight to provide public documents and data on complaints Consults with Office of Police Oversight to provide translation of some public documents into Spanish Participated in community forums with Office of Police Oversight	Staff diversity does not reflect Austin's racial makeup (64% of employees are white; fewer than 50% of Austin residents are white) Division does not collect data on racial disparities among client populations Division does not have strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for strengthening or ensuring equitable practices related to community engagement Does not provide evidence of strategies to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Does not provide evidence of institutional strategies to ensure access, translation and readability of public documents Division does not provide evidence of direct efforts to engage specifically with marginalized communities Due to overall lack of diversity at APD, division struggles to diversify staffing

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Failure of APD to recruit, train and graduate diverse cadet classes (prevents division from diversifying staff) Lack of clear strategies or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion External pressure from political actors weakens community trust in APD commitment to equity principles Structure and staffing model of division may impede fair and equitable investigations

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Collects and provides demographic data on contractors/consultants

Division consults with the Office of Police Oversight to provide public documents and data on complaints

Consults with Office of Police Oversight to provide translation of some public documents into Spanish

Participated in community forums with Office of Police Oversight

Weaknesses

Staff diversity does not reflect Austin's racial makeup (64% of employees are white; fewer than 50% of Austin residents are white)

Division does not collect data on racial disparities among client populations

Division does have strategies in place to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings

Does not provide any specific or measurable standards for strengthening or ensuring equitable practices related to community engagement

Does not provide evidence of strategies to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Does not provide evidence of institutional strategies to ensure access, translation and readability of public documents

Division does not provide evidence of direct efforts to engage specifically with marginalized communities

Due to overall lack of diversity at APD, division struggles to diversify staffing

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Failure of APD to recruit, train and graduate diverse cadet classes (prevents division from diversifying staff)

Lack of clear strategies or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion

External pressure from political actors weakens community trust in APD commitment to equity principles

Structure and staffing model of division may impede fair and equitable investigations, as IA officers are incentivized to protect one another, avoid retaliation by "going easy"

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series: Austin Police Department, Finance Division

Research and analysis provided by the Peace Mill

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THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Responses to APD Equity Assessment Results**
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4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Finance Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

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[1] Austin City Council Resolution 20150507-027

Analysis of Division Responses to APD Equity Assessment Results

APD's Finance division has a diverse staff and its leadership provides thoughtful, intentional responses to the equity assessment process. Division leadership clearly identifies problems with institutional policies that prevent the police department from pursuing systemic racial equity. Like many other divisions, Finance does not receive institutional support to strengthen equitable outcomes. While the division is one of the few in its equity assessment cohort with a staff that generally reflects the racial demographics of Austin, this makes the division an outlier. The racial equity achieved within the division's staff is not reflective of any broad culture of diversity, equity, and inclusion. Rather, this parity is achieved because division leaders are aware of, and at least committed to addressing, the need for strong equity standards within the department.

The Finance division shares many of the shortcomings of its equity assessment cohort. Finance does not have specific, measurable strategies in place for ensuring equitable hiring or contracting practices. The division does not have a process in place for ensuring the prevention of adverse effects of their programming on marginalized communities. The division also lacks clear community engagement strategies, standards or measures for improving racial equity, strategies for measuring racial disparities among its clients.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During community interviews, respondents' primary concern addressed accessibility and readability of finance data. Community respondents were interested in understanding how APD spends taxpayer dollars, but finance documents are typically written for internal purposes, which can create barriers for those unfamiliar with APD's institutional language. Respondents indicated a need for more accessible documents and reports, written at a reading level that is accessible to larger sections of the general population. This need is reflected in the division's own self-assessment. Division leaders seem to be aware of the need for more accessible information and committed to achieving this goal. Community respondents were also concerned about the general lack of translation, as most APD data is only available in English, including finance data.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Finance division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division does not have clear strategies to foster a culture of diversity, equity inclusion. The division's notable efforts to address some equity concerns is an encouraging sign, but those measures must be strengthened and codified. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing a long-term action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Finance division can build on its first steps toward building a culture of diversity, equity and inclusion within the division and influence major changes throughout APD.

SWOT Analysis: APD Finance Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Division staff diversity reflects diversity of Austin's residents Division provides demographic data on contractors/consultants Openly addresses institutional policies that inhibit equitable outcomes (allowing contractors to opt out of providing staff demographic data) Provides thoughtful responses when asked to propose ideas for strengthening racial and gender equity within division, externalizes to APD as a whole Attends and provides information at some community engagement events focused on equity-related issues Identifies some division programming that make a targeted effort to provide programming in languages other than English Recently completed assessment of reading level of divisional documents, developing plan to increase access/readability	Division does not collect data on racial disparities among client populations Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings Does not provide specific, measurable strategies / indicators for ensuring equitable outcomes in hiring, contracting Does not provide measurable evidence of division-specific efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of division-specific efforts to improve racial equity (including budget) Does not collect client satisfaction data (including demographic data) Does not collect community engagement data that allows for equity analysis

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Division staff diversity reflects diversity of Austin's residents

Division provides demographic data on contractors/consultants

Openly addresses institutional policies that inhibit equitable outcomes (allowing contractors to opt out of providing staff demographic data)

Provides thoughtful responses when asked to propose ideas for strengthening racial and gender equity within division, externalizes to APD as a whole

Attends and provides information at some community engagement events focused on equity-related issues

Identifies some division programming that make a targeted effort to provide programming in languages other than English

Recently completed assessment of reading level of divisional documents, developing plan to increase access/readability

Weaknesses

Division does not collect data on racial disparities among client populations

Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings

Does not provide specific, measurable strategies / indicators for ensuring equitable outcomes in hiring, contracting

Does not provide measurable evidence of division-specific efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of division-specific efforts to improve racial equity (including budget)

Does not collect client satisfaction data (including demographic data)

Does not collect community engagement data that allows for equity analysis

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

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Community + APD Equity Assessment Series:
Austin Police Department, Human Resources Division

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THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Human Resources Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

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In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Human Resources division has a diverse staff and its leadership provides thoughtful, intentional responses to the equity assessment process. Division leadership clearly identifies problems with institutional policies that prevent the police department from pursuing systemic racial equity. Like many other divisions, Human Resources does not receive institutional support to strengthen equitable outcomes. While the division is one of the few in its equity assessment cohort with a staff that generally reflects the racial demographics of Austin, this makes the division an outlier. The racial equity achieved within the division's staff is not reflective of any broad culture of diversity, equity, and inclusion. Rather, this parity is achieved because division leaders are aware of, and at least committed to addressing, the need for strong equity standards within the department.

The division's responses to the equity assessment tool identify a series of opportunities for developing and implementing strategies for improving equitable outcomes. Like many APD divisions, Human Resources lacks division-mandated training on diversity, equity, and inclusion. Available trainings are voluntary. The division does have systems in place for assessing negative impacts of its policies and programs on marginalized communities, especially communities of color. While Human Resources collects impressive amounts of data and provides them in clear and understandable formats in response to the equity analysis tool, the division does not have a clear community engagement strategy, which can leave community stakeholders out of its decision making process and adversely affect communities of color and other marginalized communities.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Human Resources division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of institutional strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division is committed to the *ideas* of diversity, equity, and inclusion, but this is only one step of many. The division's notable effort to address some equity concerns is an encouraging sign, but those measures must be strengthened and codified. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing and implementing a long-term, equity-focused action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Human Resources division

can build on its first steps toward building a culture of diversity, equity and inclusion within the division and influence major changes throughout APD.

SWOT Analysis: APD Human Resources Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Division collects and provides demographic data on division staff Division collects and provides demographic data on contractors/consultants Division staff diversity reflects diversity of Austin's residents Division provides strategies for strengthening equitable outcomes in hiring processes Division provides propositions for strengthening equitable outcomes for staff Division provides some translation of public documents, datasets, or other information into languages other than English	Division does not collect demographic data on racial disparities among client populations Division does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide specific strategies or evidence of proactive efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Division does not currently collaborate with other city departments to advance racial equity in Austin Does not provide evidence of efforts to engage specifically with marginalized communities in budgeting process Participation in diversity, equity and inclusion trainings are voluntary for division staff

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of mandatory training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Division collects and provides demographic data on division staff

Division collects and provides demographic data on contractors/consultants

Division staff diversity reflects diversity of Austin's residents

Division provides strategies for strengthening equitable outcomes in hiring processes

Division provides propositions for strengthening equitable outcomes for staff

Division provides some translation of public documents, datasets, or other information into languages other than English

Weaknesses

Division does not collect demographic data on racial disparities among client populations

Division does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide specific strategies or evidence of proactive efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Division does not currently collaborate with other city departments to advance racial equity in Austin

Does not provide evidence of efforts to engage specifically with marginalized communities in budgeting process

Participation in diversity, equity and inclusion trainings are voluntary for division staff

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of mandatory training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Research Methods

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About the Researcher

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Community + APD Equity Assessment Series:
Austin Police Department, Victims Services Division

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THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Community Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Victims Services Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

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In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Victims Services division performs a critical role and engages with thousands of Austin residents who are predominantly persons of color. With limited resources, the division makes a strong effort to communicate with its clients in multiple languages. Its staff is more diverse than some of its equity assessment cohort divisions, though staffing demographics do not fully reflect the demographic makeup of the division's clients in the community. The division does not have firm strategies in place to ensure a diverse staff or equitable hiring processes.

Like many APD divisions, Victims Services does not mandate division-specific training on diversity, equity and inclusion. Staff do voluntarily attend a wider variety of equity-driven training, mostly through UT's School of Social Work. However, the lack of mandated equity training reflects the wider trend at APD, with most divisions in this equity assessment cohort using ad hoc practices and relying on individual voluntary engagement with these critical learning opportunities.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

Community respondents who participated in qualitative interviews focused primarily on Victims Services' need for expanded translation capabilities. Respondents highlighted the broad diversity of languages spoken by victims of crimes in Austin. Respondents also highlighted the disparate impact that crime has on non-English speaking communities, including refugee and immigrant communities. Community members pointed to these disparities as evidence that APD must prioritize translation services as a high priority in any strategies for improving equitable outcomes created by its community programming. This concern reflects the responses of the division's leadership, highlighting widespread agreement that translation and equitable access must drive decisions and not continue to exist as an institutional afterthought.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Victims Services division's self-assessment, coupled with evidence gathered during qualitative interviews, highlights a unique need to prioritize translation services, access to information, and innovating community engagement strategies. The division's leadership expresses a desire to strengthen diversity among its staff and equity in the services it provides to clients, but like many divisions, Victims Services lacks clear strategies for ensuring equitable practices and outcomes. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, translation services, and other critical issues. By building on the knowledge of equity possessed by many of the division's staff, which includes many social workers, Victims Services can help the department build and sustain a culture of diversity, equity and inclusion that will have positive external effects for other divisions, community clients, and the City of Austin writ large.

SWOT Analysis: APD Victims Services Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Division collects and provides demographic data on contractors/consultants Division collects some demographic data on clients served Division consults with Department of Public Health in equity-based discussions Attends and provides information at some community engagement events focused on equity-related issues Provides some resources to clients in languages other than English, recognizes importance of expanding translation to meet needs of diverse client base Engages in some community engagement events, provides Spanish translation at events	Division staff diversity loosely reflects Austin demographics but does not reflect the demographics of client communities, which are predominantly communities of color Division does not collect demographic data on racial disparities among client populations Division does not have specific or measurable strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any current specific or measurable standards for strengthening or ensuring equitable practices (leadership expresses interest in making changes) Division does not currently assess reading level of written materials, other information Division does not have specific or measurable strategies in place to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Division does not collect client (community members, crime victims) satisfaction data

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership Lack of institutional commitment to adequate translation services at APD threatens division's specific and tremendous need to communicate in many languages other than English

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Division collects and provides demographic data on contractors/consultants

Division collects some demographic data on clients served

Division consults with Department of Public Health in equity-based discussions

Attends and provides information at some community engagement events focused on equity-related issues

Provides some resources to clients in languages other than English, recognizes importance of expanding translation to meet needs of diverse client base

Engages in some community engagement events, provides Spanish translation at events

Weaknesses

Division staff diversity loosely reflects Austin demographics but does not reflect the demographics of client communities, which are predominantly communities of color

Division does not collect demographic data on racial disparities among client populations

Division does not have specific or measurable strategies in place to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide any current specific or measurable standards for strengthening or ensuring equitable practices (leadership expresses interest in making changes)

Division does not currently assess reading level of written materials, other information

Division does not have specific or measurable strategies in place to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Division does not collect client (community members, crime victims) satisfaction data

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Lack of institutional commitment to adequate translation services at APD threatens division's specific and tremendous need to communicate in many languages other than English

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Community Engagement Process Evaluation and Recommendations

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

List of Acronyms	3
Summary	4
Background: Equity Office and Equity Assessment Tool	7
Community + APD Meeting Series: Background	8
Community + APD Meeting Series - Overview and Structure	8
Purpose of Report and Research Methods	11
Results Summary	12
SWOT Analysis	13
Recommendations	15
Conclusion, Context, and Insights	18
About the Researcher	19

Acronyms

APD: Austin Police Department

C+APD: Community + APD (the informal name of the meetings between community and APD)

COA: City of Austin

EAT: Equity Action Team

SWOT: Strengths, Weaknesses, Opportunities and Threats, a type of analysis framework

Summary

This report assesses the pilot phase of the Community + APD initiative, a series of meetings organized and facilitated by the City of Austin Equity Office as part of its equity assessment of the Austin Police Department. In 2019, the City of Austin's Equity Office engaged the Austin Police Department in an uncommon strategy to address systemic inequities in policing. As local governments across the country struggled to address growing tensions between underserved, overpoliced communities and city police departments, the Equity Office invited the Austin Police Department and collection of community members to a series of important dialogues on equity and policing. This report assesses the strengths and weaknesses of the Community + APD initiative and provides a series of recommendations for improving future meeting series.

As part of the City's equity assessment process, APD staff and officers, community leaders, and Austin residents gathered together for a series of dialogues, during which community members could engage directly with APD representatives. The discussions centered around each division's responses to the Equity Assessment Tool and were designed to add a level of community accountability to the equity assessment process. While some community participants were associated with the Equity Action Team, others in attendance were unaffiliated residents.

Over the course of many weeks, community members and APD staff and officers engaged in direct, facilitated conversations on hiring practices, victim service provision, data collection, use of force training, and a host of other issues related to equity and policing in Austin. At each meeting, participants sat together over a locally prepared meal, co-created ground rules for the discussions, and proceeded through approximately two hours of facilitated discussion. Community members led the discussions by asking questions related to each division's Equity Assessment Tool responses. APD division representatives, including sworn and civilian staff, responded to community members' questions in two main formats:

- Rotating small group discussions:
    - Divisions sit at separate tables with 3-5 community members

- Community members ask questions, division representatives respond, dialogue
- After an allotted time, community members rotate to new division tables
- Professional facilitator manages process, engages groups at random

- Static large group discussion:
  - Questions are sourced one at a time from assembled community members
  - APD responds to questions one at a time, dialogues with community members
  - Professional facilitator manages process, allocating specific times for APD responses and community followup questions

The report that informed this report includes several measures designed to assess the strengths and weaknesses of the pilot series of Community + APD meetings. To produce this report, the Equity Office engaged a local, third-party researcher to assess the pilot program and make recommendations for improving the process. This research included observation of Community + APD discussions, desk research (project documents, feedback forms and related reports), and a series of in-person, qualitative interviews. Interview respondents included APD staff and officers, community leaders, independent residents, and Equity Office staff.

Respondents were overwhelmingly supportive of the Community + APD initiative. Most offered recommendations for strengthening the program, but all respondents agreed that the Community + APD program was a worthwhile investment of community, City of Austin and APD resources. The Community + APD meetings created an uncommon mechanism for direct resident accountability and the multidimensional meeting structure facilitated a variety of group dynamics. Equity Office staff leveraged the Equity Action Team's deep community roots to recruit a broad spectrum of community participants. Despite a volatile political climate, Community + APD participants gathered each week and honored the contract that they had drafted together, engaging in a constructive and respectful dialogue.

This report's findings indicate a need for increased institutional support for the Community + APD initiative. City leaders should provide expanded resources to address shortcomings identified during the program's pilot phase. Interview respondents from all groups agreed that future participants would benefit from a more in-depth training/onboarding process, including informative sessions on the structure and history of APD, the equity analysis process and other topics that would facilitate more productive discussions. This report also offers a series of detailed recommendations based on the interview responses of Community + APD participants. These recommendations include:

- additional training + onboarding + relationship building sessions
- increased budgetary support
- incentive packages for Community +APD initiative community members
- codified equity assessment standards at APD
- implementation of guidelines for increased cohesion and engagement
- development of equity liaison role within APD to facilitate assessment process

During a time of unprecedented public mobilization and often hostile rhetoric on issues of equity and policing, the Community + APD initiative provides an opportunity for peaceful, constructive dialogue between representatives of the police department and the communities that they are sworn to serve. City leaders should provide increased support to ensure that the Community +APD initiative can play a role in the equity assessment process for all APD divisions. Through increased support for this hopeful initiative and broader institutional backing for equity-driven change across city government, Austin's leaders can take a small step step down the narrow path toward mending the deep wounds caused by decades of systemic oppression and structural directed toward Black, Latinx, Indigenous, immigrant, refugee, LGBTQ+ and other historically marginalized communities who live, work, and worship in Austin.

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

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OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

Community + APD Meeting Series: Background

In 2018, Austin's City Manager supported the expansion of departmental equity assessments and mandated that all City departments complete the process. The second equity assessment cohort included the Austin Police Department, an immense organization with 2,646 employees divided among 48 divisions. Due to the department's size and input from the community, Equity Office staff determined that it would benefit the process, the community and the police department to directly engage community members and APD employees in a series of dialogues over several months in 2019 as part of APD's equity assessment process. These meetings were generally referred to as "Community and APD." For the purposes of this report, the meeting series is referred to interchangeably as Community + APD or C+APD.

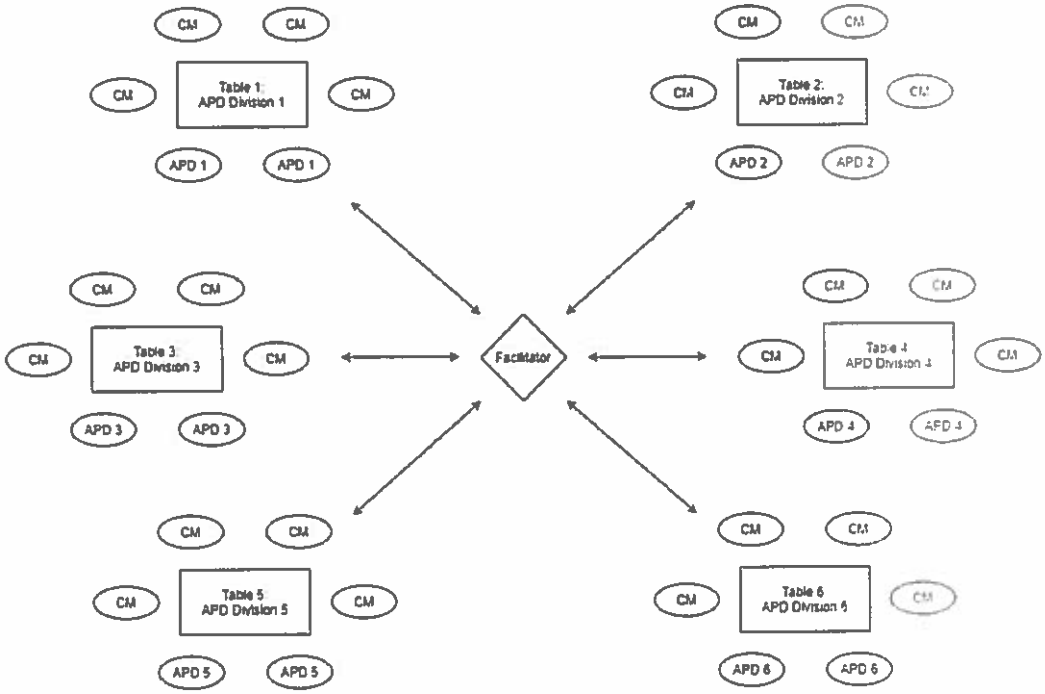
Community + APD Meeting Series - Overview and Structure

The pilot series of C+APD meetings involved seven APD divisions: Recruiting, Training, Finance, Internal Affairs and Professional Standards, Human Resources and Administration, Data Planning, and Victims Services. During the C+APD meeting series, meetings took one of two structures: small group discussions based on division or large format discussions, during which each division presented.

Small Group Format. During the first segment of meetings, participants met in small groups, with several community members gathering around a table with representatives from a single APD division (see Figure 1). Representatives from each division responded to community members' questions, which were generated in response to answers from APD's equity assessment. After division representatives answered initial questions, community members and APD engaged in dialogue to clarify answers, seek and provide further information, and address community concerns related to each division's responses. After a period of time, the C+APD

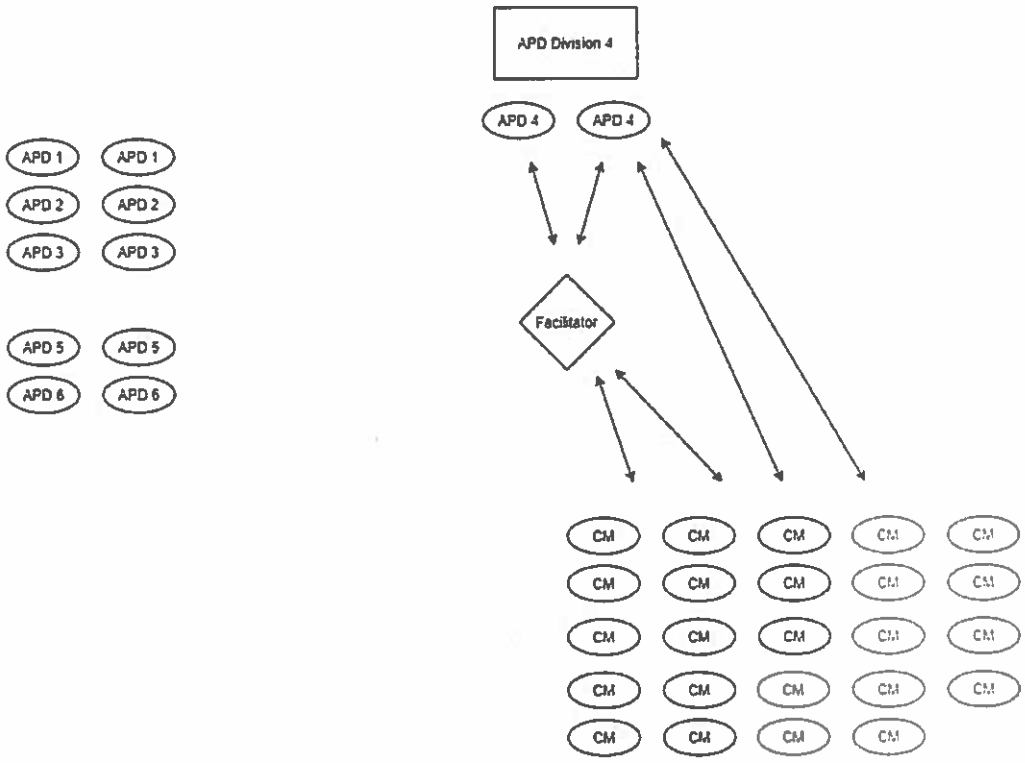
facilitator directed the community groups to rotate and join different division tables, repeating the dialogue process several times until the meeting was concluded.

Figure 1. Discussion Structure 1: Community + APD Equity Assessment Process



Large Group Format. In addition to the roundtable discussions, C+APD participants discussed APD equity assessment responses in a large group format (see Figure 2). Under this arrangement, rather than separating community members into small groups, community members remained gathered in a single, large group. Community questions were presented to APD division leaders one at a time, with an allotted period for discussion afterward. After the allotted time had elapsed, APD divisions rotated and the discussions continued until the meeting was concluded.

Figure 2. Discussion Structure 2: Community + APD Equity Assessment Process



To ensure transparency and accountability, the Equity Office contracted a researcher to attend C+APD meetings, observe interactions between participants, conduct qualitative interviews with participants, and produce recommendations for improving the C+APD equity analysis process. The goals of this research and purposes of this report are to:

- Identify common themes expressed by participants
- Analyze the C+APD program's strengths, weakness, opportunities and threats
- Generate actionable, evidence-driven recommendations for future meetings

Since August 2019, the researcher tasked with producing this report has completed the following research activities:

- Community + APD meeting attendance and observation
- Desk research
- Semi-structured, qualitative interviews with C+APD participants

This report draws equally from the researcher's observations, background research and interview responses. During C+APD meetings, the researcher observed interactions between participants to identify common themes, obtained direct feedback from participants and documented the meeting structure and other details. Participant interviews included Equity Office/C+APD staff, Austin community members, and APD staff and sworn officers. Interviews were semi-structured and tailored to participant roles. While some questions were posed to all participants, APD staff and officers were asked questions that related directly to their role, work, experiences, and perspectives as members of APD. Similarly, community members were asked questions that related directly to their experience and perspectives as community members.

Interviewees self-selected into the study group. After the C+APD meeting series concluded, Equity Office staff provided the researcher with a contact list of C+APD meeting participants, both community members and APD. The researcher invited all C+APD contacts to participate in

an initial survey. Those who responded to the survey were invited to participate in a longer, qualitative interview. The researcher conducted twelve semi-structured interviews, during which respondents were asked a series of prepared questions. Upon completion of the prepared questions, the researcher asked participants to offer general thoughts, recommendations and general responses to the C+APD experience. Interview participants included APD staff and officers (5), community members (4) and Equity Office staff (2). Due to the sensitive nature of the interviews, concerns about possible retaliation toward respondents, and a desire to create a safe space where respondents could offer their unfiltered perspectives, the researcher anonymized the respondents. To this end and for the purposes of this report, respondents are described as APD employees, community members, or equity office staff. Any language that may indicate the identity of specific respondents has been intentionally omitted from this report.

Results

The organizers and participants of the C+APD undertook a difficult task with relatively little precedent. The pilot series of C+APD meetings provided a strong baseline upon which Equity Office staff can build future meeting series. While interview respondents offered a host of recommendations for improving the experience, each participant expressed overall satisfaction with the program. Equity Office staff increased accountability by engaging a wide range of community perspectives and including an evaluation mechanism. The C+APD facilitator varied the meeting structure, allowing participants to engage with one another in multiple formats, including small group and large presentation settings. City staff successfully recruited community participants with a range of perspectives, and participants honored a contract to engage in respectful, constructive dialogue.

Figure 3. SWOT Analysis of Community + APD Equity Assessment Process

Strengths	**Opportunities**
Strong buy-in from community, APD staff/officers and city staff	Strengthening citizen oversight mechanisms, reinforcing community dialogues
Direct community engagement provided by meeting structure provided increased transparency and accountability	Development and implementation of C+APD training curriculum
Multi-dimensional meeting structure increased opportunities for dialogue	Increased budgetary support to Equity Office for resources, staffing, translation services
City staff recruited broad spectrum of community participants	Incentive programs to strengthen community participation
City staff and facilitator created a "graceful space" - participants honored group contract	Development of standard equity assessment process within APD
Weaknesses	**Threats**
Lack of resources and incentives limits engagement	External pressure from political actors and political climate may influence participants
Community members and APD lacked comprehensive training, sufficient preparation	Fear of retaliation, other threats increase attrition and decrease participant engagement
Time constraints limit opportunities to build trust between community and APD	High profile incidents may influence participant engagement
Absence of accountability metrics makes it difficult to measure equity-related outcomes	Systemic, institutional racism threatens to prevent high level changes
Participants did not clearly understand goals or intended outcomes	Failure to codify equity standards and assessment processes weaken institutional memory

Through their discourse during meetings and their survey and interview responses, C+APD participants highlighted a litany of positive experiences, opportunities for improvement, moments of confusion, challenges, frustrations and hopes. This report synthesizes their ideas into an abbreviated SWOT analysis, highlighting the C+APD initiative's strengths, weaknesses, opportunities, and threats. These are outlined in Figure 3 above and the bulleted lists below.

Strengths

- Strong buy-in from community members, APD and staff
- Direct community engagement and evaluation increase transparency and accountability
- Multi-dimensional meeting structure increased dialogue
- City staff recruited broad spectrum of community perspective
- "Graceful space" - participants honored group contract

Weaknesses

- Lack of resources and incentives limits engagement
- Community members and APD lacked comprehensive training, sufficient preparation
- Time constraints limit opportunities to build trust between community and APD
- Absence of accountability metrics makes it difficult to measure equity-related outcomes
- Participants did not clearly understand goals or intended outcomes

Opportunities

- Strengthening citizen oversight mechanisms, reinforcing community dialogues
- Development and implementation of training curriculum
- Increased budgetary support to Equity Office for resources, staffing, translation services
- Incentive programs to strengthen community participation
- Development of standard equity assessment process within APD

Threats

- External pressure from political actors and political climate may influence participants
- Fear of retaliation, other threats increase attrition and decrease participant engagement
- High profile incidents may influence participant engagement
- Systemic, institutional racism threatens to prevent high level changes
- Failure to codify equity standards and assessment processes weaken institutional memory

General Recommendations

Due to widespread support from community members, APD employees and City officials, the researcher recommends that city officials extend the Community + APD meeting series and include a series of C+APD meetings as part of each cohort of APD divisions' equity analysis process. While the pilot series of meetings accomplished a great deal of progress, the researcher has included the following list of recommendations to improve the C+APD process and the overall experience of C+APD participants. These recommendations are designed to represent participant voices by synthesizing the collective needs expressed during meetings, surveys and interviews.

Recommendation 1: Develop a training workshop that briefs participants on equity principles, equity analysis tool and process, APD systems and C+APD goals

Most interview respondents expressed a general lack of understanding of the overarching goals or intended outcomes of the C+APD process. Equity Office staff should develop and incorporate one full day or two half days of training for all C+APD participants that includes:

- Equity principles and frameworks
- History of Equity Office and equity assessment tool
- Equity assessment process: guidelines for implementation
- APD organizational history, systems, structure and processes
- C+APD process, goals, intended outcomes, and process

Recommendation 2: City officials should reallocate a portion of the public safety budget to the Equity Office to ensure the success and sustainability of future C+APD meeting series.

The Community + APD pilot program achieved remarkable results while operating with significantly constrained resources. City officials should increase budgetary support to the Equity Office to directly support the expansion of the C+APD initiative. The Equity Office should include specific funding for the expansion of C+APD in future budget requests, and City officials should honor these requests as a commitment to the community members engaged in

these critical dialogues. These resources should be reallocated from the public safety budget as an earnest investment and symbol of commitment to improving APD's relationship with the community.

Recommendation 3: To increase participation and mitigate attrition, officials should develop an incentive package for community participants who are attending as independent residents.

Community members struggle to participate in important initiatives such as the C+APD program. Many economic factors, including the cost of transportation and the lack of childcare, prohibit residents from participating in the C+APD initiative. To increase access to meetings and enrich the discussions with the voices and lived experiences of Austin residents, City leaders should fund the development of incentive packages for resident participants. These packages can include:

- Stipends to cover travel and participation costs
- Childcare services for families
- Translation services for non-English speaking participants
- Additional services or incentives that may increase engagement

Recommendation 4: To foster trust, APD officers and staff should attend meetings in business casual or casual "civilian dress" and should arrive at meetings unarmed.

Community members, APD staff and sworn officers all identified a need for increased trust between participants. During interviews, many respondents agreed that the mere presence of a police officer's tactical gear, especially an officer's service weapon, can make community members less likely to engage in a difficult, honest dialogue and generally make community members feel less comfortable. All C+APD participants should take measures to increase trust and foster a comfortable meeting space. APD leadership should direct all armed officers participating in the C+APD program to arrive in casual clothing and to attend meetings unarmed.

Recommendation 5: Officials must codify APD equity standards and assessment processes. APD division leaders undertook varied approaches when completing the equity assessment process. Some division leaders collaborated with staff to provide comprehensive, quantitative answers to the assessment tool's list of questions. Other division leaders completed the assessment without input from other staff. In interviews, APD staff highlighted a lack of clear direction from APD leadership for completing the equity assessment process. By co-creating equity assessment standards with support from the Equity Office and codifying those standards as department-wide protocol, APD leadership can better support division leaders and ensure assessment results that are measurable, accurate and actionable.

Recommendation 6: Create an equity liaison role, overseen by the Equity Office, to ensure continual support and accountability for all APD divisions as they address inequities. During interviews, APD participants expressed support for additional guidance during the equity assessment process. Most divisions and division leaders lack the additional time needed to learn and implement the equity tool well. City officials should create and fund an equity assessment liaison, a role housed outside of the police department to ensure independence. This individual would oversee the implementation of a systemic, department-wide equity assessment process. As new cohorts of divisions complete the assessment process, this equity liaison would provide support, guidance, and oversight of division leaders and their teams. The liaison would ensure that each division's equity analysis gathered measurable evidence and produced actionable results. The independence of this role, and of any positioning ensuring accountability to equity standards, is absolutely critical.

A note on Recommendation 6: Many public agencies assume that symbolic hiring will solve issues of organizational racism. Simply creating an equity officer (or similar administrative role) within the police department will not solve the systemic issues facing APD. Creating such a role within the police department would provide the opportunity for current leadership to evade its own obligations to serious reforms. Before any new positions are created within APD, the

agency must address the deep systemic and cultural problems that have been brought to light during recent events and during the C+APD meetings.

Conclusion, Context, and Insights

This report provides a series of achievable recommendations that comprise a single first step toward a stronger, more equitable relationship between the communities of Austin, Texas, and the privileged individuals who are sworn to serve those communities. These recommendations include increased financial and staffing support for the C+APD community dialogue series, actionable guidelines for APD employees to help build trust with community members, and codified equity standards to ensure deep systemic and cultural change at APD.

It is impossible to deliver this report without reflecting on the demonstrations taking place right now in cities across the United States, including Austin, in response to ongoing, systemic abuse and violence against Black, brown and poor communities by police forces; violations of international human rights standards by police forces; rapid militarization of local police forces; and cultures of racism, sexism, and homophobia among American police agencies. It is also essential to reflect on the ongoing police and military response to those demonstrations. How can a community place trust in the commitments of APD leaders to *de-escalatory, anti-racist* training policies when its riot control officers are shooting unarmed Black demonstrators in the face at short range with rubber bullets and launching CS gas into crowds that include children and pregnant women? How does the community trust the commitment of police leadership to *de-escalatory, anti-racist* training policies when another unarmed Black man is fatally shot by its officers in broad daylight in front of an exhausted community? How can community members build trust with police leaders who choose to leave as a unit during lunch at anti-racism workshops rather than break bread with the community members who have given their time freely to do the tremendous work of undoing systemic racism? These crucial questions arose from the community during interviews and conversations throughout this evaluation. Their honest criticisms provide critical citizen perspectives and a starting point for City leaders committed to building a more just and equitable Austin.

About the Researcher

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Racial Inequities and Institutional Racism:

A Report Submitted to The City of Austin Equity Office and The Austin Police Department

Joyce James Consulting
Equal Treatment Does Not Lead To Equity

November 2020

TABLE OF CONTENTS

Executive Summary 5
Introduction 5
Theories of Action 5
Background 5
Methodology 5
Documentation Review 5
Interviews 6
APD Climate Assessment Survey 6
"A Groundwater Analysis of Racial Inequities" Training 6
Analytical Framework—Texas Model for Addressing Racial Disproportionality and Disparities (2010) 6
Documentation Review—General Conclusions 6
Tatum Report 6
Police Profiling 7
Use of Force 7
Police Training 7
Community Policing 7
Recommendations 8
Data Driven Strategies 8
Leadership Development 8
Culturally Competent Workforce 8
Community Engagement: a four staged process 8
Cross Systems Collaboration 8
Training Defined by Anti-Racist Principles 9
An Understanding of the History of Institutional Racism and the Impact on Poor Communities and Communities of Color 9
Quick Wins 9
Documentation Review and Analysis 10
The Tatum Report 10
Review of the Report 10
Overview of the Report Recommendations 11
Key Observations/Comments from Interviews 11
Survey Data 11
The Joint Report on Racial Profiling, Responses and National Data 12
Austin Data 12
Overview of Recommendations 14
National Data 14
Key Observations/Comments from Interviews 15
Responses to the Report 15
Survey Data 17

Police Use of Force and Shootings....18
Austin Data....18
National Data....18
Key Observations/Comments from Interviews on Use of Force....18
Recommendations on Police Shootings and the Use of Force by the Office of Police Oversight....18
Survey Data....19
Police Training....19
Austin Data....19
National Data....20
Dr. Villanueva Recommendations....20
Key Observations/Comments from Interviews Regarding Training and Advancement....20
Community Responses to Training: (From the Responses to the Joint Report on Police Profiling)....22
Response 3....22
Community Policing....23
Austin Data....23
Community Policing Matrix Report 2020 Key Recommendations....23
Community Policing/Advancement in Austin 2020....23
National Data....23
Key Observations/Comments from Interviews....24
Survey Data....25
Conclusion....25
References....26
Appendix A: APD Climate Assessment Survey....27
Appendix B: Community Engagement Model....30
Appendix C:A Groundwater Analysis of Racial Inequities....32
Appendix D: The Groundwater Analysis Workshop Technical Assistance Report....35

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EXECUTIVE SUMMARY

Introduction

Joyce James Consulting, LLC (JJC) prepared this report for the City of Austin (City) Office of Equity (OOE). The OOE engaged JJC to help identify racial inequities within the Austin Police Department (APD) and develop immediate and prolonged strategies to eliminate them. Key components of the scope of work addressed by this report include a documentation review relevant to APD and racial disparities; survey of the APD climate and culture to include selected interviews; facilitation of the Groundwater Analysis® training and debrief for APD leadership; and work with the APD and OOE to develop the strategies and objectives based on the findings from the documentation review, interviews, training, and debrief.

The mission of JJC is to support organizations, institutions, systems and communities in developing a racial equity lens to recognize institutional and structural racism as the root cause of racial inequities in all systems. By assisting in the development of organizational cultures that actively engage in sustainable strategies to eliminate racism, JJC works to improve systemic outcomes for all populations.

JJC has decades of unique experience and proven success in reducing systemic racial disproportionality and disparities. Using the Texas Model for addressing racial inequities as an analytical framework and the Groundwater Analysis of Racial Inequities, JJC's work focuses on the intersectionality of racial inequities and deeply rooted institutional and structural racism.

Theories of Action

The success of the Texas Model, pioneered by Joyce James, is attributable to three theories of action: transformative learning, critical race theory (CRT), and adult learning.

Transformative learning is the "process of experiential learning, critical self-reflection, and rational discourse that can be stimulated by people, events, or changes in contexts that challenge the learner's basic assumptions" (Brown, 2006). Through transformative learning, key leaders and critical stakeholders will develop new learning that constructs and appropriates critical shifts in interpreting quantitative and qualitative data and information on racial inequities (Taylor, 2008).

Relative to transformational learning, key features of the critical race theory will serve to enhance and inform equity strategies. CRT argues that "racism and other forms of oppression are central to the experience of people of color and dominant ideologies justify the status quo/structural oppression and must be challenged" (DeMatthews, 2016).

Finally, the adult learning theory, in this context, means "making" or building "knowledge construction" in a way that fosters "critical reflection...essential for transformative learning" (Merriam, 2008). Leadership learning must take place using strategies that promote reflection, discussion, and action.

Background

The APD is a quintessential twenty-first century urban law enforcement organization. With more than 2,600 sworn and civilian personnel, the APD operates inside a densely populated city core and citizenry of nearly one million. Like many urban U. S. cities, the APD data show decades of racial disparities. That is, the known differences in how APD officers interact with people in communities of color.

City leadership is demanding change and voice a commitment, "...to implementing policy and cultural changes to address the disproportionate impact of police violence on people of color and other affected communities." To this end, the OOE and APD are working to make institutional and structural racism, which may be invisible to some, consciously aware to all. The ongoing, intentional and deliberate effort now underway by the APD is critical to moving beyond a somewhat singular emphasis on the bias, prejudice, and bigotry of racism at an individual level to a deeper more systemic analysis of the APD policies, practices and procedures that contribute to racial inequities and a culture that may be at work to keep them in place.

Methodology

Documentation Review

The documentation review reflects a national context when appropriate. While the OOE engaged JJC prior to the death of George Floyd and subsequent protests in Austin and across the country, racial strife in our country is not new nor is the racial strain between the police and the citizens (Brown, 2020; also see NPR on History of Policing in America).

The documentation review was inclusive of the following reports and documents:

- *Austin Police Department Independent Investigation Fact Investigation (referred to as the "Tatum Report")*
- *Analysis of Austin Police Department's Racial Profiling Report, January 2020*
- *The Science of Policing Equity*
- *Austin Police Department Annual Racial Profiling Report (Years 2006-2017)*
- *Community Policing Advancement in Austin*
- The APD Response to the Joint Report
- APD Training Academy Review and Strategic Plan

Interviews

To further examine the current APD institutional culture, JJC conducted interviews with individuals and small groups of internal and external stakeholders. These groups included civilian and sworn staff, affinity groups, the Office of Police Oversight, the OOE, and community members. It should be noted that throughout this report, where possible, the comments of interviewees are verbatim. However, because sessions were not recorded, some verbiage may have been missed. Additionally, when the interviewee/respondent could be identified by their comments, those comments were summarized to maintain the confidentiality of the process.

APD Climate Assessment Survey

To further assess the current APD culture about race and equity, both civilian and sworn staff completed a racial equity assessment. The entire survey can be found in Appendix A and specific responses are provided in the appropriate sections of this report.

"A Groundwater Analysis of Racial Inequities" Training

JJC conducted a two-day Groundwater Analysis workshop for APD sworn and civilian leadership, representatives of the equity office, and members of the community on September 24-25, 2020 (Appendix C). JJC pre- and post-training surveys and an evaluation were completed by participants. The initial evaluation responses from many participants were that "this is the best training we have ever had" and post-training surveys confirm a significant and positive shift in their understanding of institutional and structural racism and the impact on the racial inequities that exist within APD culture. Complete analysis of participants' responses on the surveys and evaluation are provided in Appendix D this report.

Analytical Framework—Texas Model for Addressing Racial Disproportionality and Disparities (2010)

Developed in 2010, the Texas Model for Addressing Racial Disproportionality and Disparities (Texas Model) has been found to effectively reduce racial inequities and improve outcomes for all populations in Texas (James, et. al., 2020). The Texas Model, described below, serves as the analytical framework for the JJC APD recommendations in this report.

- Data-driven strategies: regularly collect, research, analyze, and evaluate data in line with a racial equity approach
- Leadership development: grow both systems and community leaders that are courageous and grounded in a racial equity approach
- Culturally competent workforce: develop workforce that reviews and examines its work through an anti-racist and humanistic lens
- Community engagement: recognize strengths of grass roots community, hear its ideas, and include it throughout process
- Cross systems collaboration: share data, training, and dialogue with systems, institutions, and agencies that serve the same populations
- Training defined by anti-racist principles: train ourselves and partners in principles that ensure we work at cultural and institutional levels
- An understanding of the history of institutional racism and the impact on poor communities and communities of color: develop common analysis of racism and history that led to current outcomes

Documentation Review—General Conclusions

Tatum Report

Interviews and surveys tended to support the Tatum report allegations of internal negative issues at APD regarding race, gender, and sexual orientation. Interviewees regarded the handling of the report as generating a lack of trust and a view that specific action would not be taken to remediate the problems. Survey data indicated that African Americans were less satisfied

with the workplace climate related to promotion, complaints, and fairness than Hispanics/Latinxs and Whites. Women were more dissatisfied than men along these survey dimensions.

Police Profiling

National and local data indicate that a higher percentage of African Americans, and Latinxs were stopped, cited, arrested, and searched than Whites, even when other factors were considered (e.g., visibility of occupant). It is also on the rise. Three reports responding to the profiling data were reviewed. This, as well as interviews, and survey data on attitudes toward race, gender, and sexual orientation converged to paint a picture of an institutional culture that lacks accountability at the leadership level in responding to repeated complaints about racism, gender, and sexual orientation. Interviews with management indicated their awareness of the report findings as did community members. Survey data on attitudes toward race indicated that African Americans generally were in less agreement with APD's tolerance toward race, institutional and structural racism, non-discriminatory practices, and their ability to raise questions and provide solutions along these lines. The findings were acknowledged by the Chief of Police and his response to the recommendations in the profiling report are elaborated verbatim in Response 3 to the profiling report. We also recommend as part of the data analysis above in the Texas Model that police profiling should contain a thorough verification and clear, transparent reporting of whom they stop, and should require a more comprehensive analysis (e.g., causative factors such as poverty, race community, crime, dispatching, etc.)

Use of Force

The sources of information reviewed converge on use of force being, in part, racial. The 2016 Austin data clearly show that force and force severity is disproportionately used on African Americans, even when other neighborhood demographic characteristics such as poverty and crime are considered. National data on police shootings show that African American men and women, and Latino men and Latina women are far more likely to be killed than White men and women. APD reported twelve cases with Officer involved shootings for the year, with five ending in fatalities. All five were minorities. The survey indicated that most respondents are aware of the police reports contained in this document, including profiling and the use of force. Interviewees suggested more consistent use of body cameras and training that focuses on examining socialized attitudes and assumptions that have led to fear on the part of the police to communities of color. Recommendations included greater specification of force and shooting incidents in reports (to include the mentally ill) and increased training on de-escalation.

Police Training

The report on training by Dr. Villanueva was consistent with the survey in this report as were the interview comments. These lined up with national information. Weaknesses were found throughout the system and included the structure, culture, curriculum, and teaching effectiveness. The paramilitary format and less attention to different learning styles and community policing were found to lead to greater attrition. Moving from a warrior mindset to a guardian mindset was one of the stronger recommendations as was more diverse recruiting and greater discussion on the criteria for rejection (e.g., credit scores, financial status). These sentiments were echoed in interviews along with the need for resolving complaints by recruits, better mental health and trauma training, improved recruitment of more officers of color and women (national data also reflect this), diversity of instructors and materials presented, more information on institutional/structural racism, mentorship, and developing a better career path for recruits. Recommendations included transformation to an adult learning model, more attention and awareness of racial issues, and community placements for cadets to help build relationships in the community.

Community Policing

National data, local interviews and survey data all confirm that community policing in Austin could be improved. In particular, the information suggests that the community itself should have a much more active role in building a partnership and working in collaboration with the police in their communities. The national data suggest what community policing could be, how it could affect legitimacy, and satisfaction on all participants and even crime. However, there are three obstacles that impede these goals: (1) the lack of time on the part of the police and lack of trust in them, (2) the lack of empowerment of the marginalized communities to have a true partnership with the police, and (3) over-policing these communities. African American survey

respondents were less likely to endorse the current effectiveness of community policing than Whites or Hispanics/Latinxs.

Recommendations

The following JJC recommendations outline the proposed APD strategies to reduce and ultimately eliminate racial inequities, institutional racism, including gender and sexual orientation within its systems and improve outcomes for all populations.

Data Driven Strategies

- Examine data on the attrition rates of Blacks and develop new strategies for recruitment and retention.
- Use data to inform and obtain input from internal and external stakeholders to develop a new and bold out of the box community policing model in a real community engagement process.
- Assess the capacity of new and existing staff to examine old attitudes, assumptions, and stereotypes about race, gender, and sexual orientation.
- Create a clearly defined roadmap with appropriate metrics, benchmarks, and milestones that define and gauge progress.
- Verify that police profiling ensures clear and transparent reporting of whom they stop and undergo a more comprehensive analysis (e.g., causative factors such as poverty, race, community, crime, dispatching, etc.).

Leadership Development

- Demonstrate a higher level of accountability for creating a visible anti-racist institutional culture at all levels of leadership within APD.
- Take steps to create a short-term career ladder to hire/promote a critical mass of African Americans in leadership positions, including Commanders and Assistant Chiefs.
- Require representatives from the executive team, including internal affairs, the union, and all affinity groups to participate in regular and ongoing leadership development sessions to intentionally expand their racial equity lens and build their capacity to contribute to reducing inequities and improving outcomes for all.
- Review employment policies and practices through a racial equity lens, especially as they relate to promotions, transfers, and hiring disqualifiers. For example, consider allowing second chances for bad credit, eviction, and so forth.
- Include in the field training officers program opportunities to ensure that new officers transfer their academy training to the field regarding racial equity. For example, explore including "ride-alongs" in the community as a part of the academy training.

Culturally Competent Workforce

- Add racial equity training (Groundwater Analysis) to (a) supervisor training class; (b) the 40-hour officer re-certification class; (c) academy instructor training; and (d) existing cadet academy diversity training. **The Groundwater Analysis training is TCOLE approved for credit for diversity training.**
- Utilize the Groundwater Analysis workshop for racial equity training with leadership and staff at all levels that includes a focus on understanding institutional and structural racism that has led to socialized attitudes and assumptions resulting in fear on the part of the police in communities of color and leading to more arrests, shootings, and fatalities.
- Develop a timeline for training all APD staff and special units in the Groundwater Analysis.

Community Engagement: a four staged process

- Implement the JJC Community Engagement Model (Appendix B).
- Develop, in collaboration with APD and TPOA, a mentoring program for African American cadet populations who have been impacted by institutional and structural racism.
- Invite individuals and community groups no longer engaged with APD back to the table.
- Demonstrate transparency in regularly communicating with internal and external stakeholders.
- Develop specific strategies to hear voices from all segments of the community, e.g. homeless, LGBTQ(IA+), inclusive of black trans women.

Cross Systems Collaboration

- Collaborate with City of Austin's departments and other systems that are making decisions that impact APD's work, e.g. education, housing, health/mental health, CPS, and financial institutions.
- Develop strategies that result in optimal collective impact on internal and external communities.
- Convene an information sharing summit that includes

all of the various groups that are working to develop plans that impact APD e.g. Reimagine Austin.

Training Defined by Anti-Racist Principles

- Develop a formalized process for all new cadets to engage with the communities that experience the most disparate treatment in relationships with APD, as part of their training.
- Make it clear on the front end of hiring and throughout the system that there is zero tolerance for racism.
- Examine and remove any materials, videos, etc. that stereotype Black men as being more criminal.

An Understanding of the History of Institutional Racism and the Impact on Poor Communities and Communities of Color

- Develop processes during ongoing JJC strategic planning sessions to monitor, measure, evaluate, and make visible, the strategies for addressing the long history of racism that has continued to create and perpetuate less than desirable outcomes for internal and external stakeholders.
- Apply a deeper awareness and sensitivity to Black culture in the hiring process.
- Develop strategies to eliminate excessive use of force while at the same time considering the common goal of APD's desire for officers to go home after every shift, and the community's desire for their loved ones to come home after being stopped by the police.
- Use the true history of policing to raise the awareness of all APD officers and staff about the lingering effects of racism.

Quick Wins

1. Circulate an agency-wide communication from the Chief utilizing the consultant's report as a vehicle for opening lines of internal communication, acknowledging mistakes, and making the commitment to lead the work of creating an anti-racist institutional culture in APD. (This will be ongoing, but it can start right away.)
2. Provide Groundwater Analysis workshop to APD recruiters and training officers in advance of the next cadet class.
3. Based on positive response, prioritize Groundwater Analysis training at all levels of APD, with a specific focus on those areas with the greatest need for immediate training, based on the very positive response to the recent workshop.
4. Identify in collaboration with APD communications, various opportunities to share and discuss this report with the community and obtain their feedback on the recommended strategies.
5. Begin planning for a specific community engagement initiative with residents of a Patrol Sector to be identified with input from community stakeholders, assigned officers, and Affinity Groups such as TPOA, that will focus on building trust and opportunities for a new and effective model of community policing
6. Incorporate recommended strategies for working with TPOA into this framework to ensure consistency in working from an analysis of institutional racism and through a racial equity lens.
7. Engage and utilize the voices of community members involved in the Groundwater Analysis workshop, debrief, and strategy session to work with APD in regaining the trust of the community and to ensure their ideas do not get lost in the process.

DOCUMENTATION REVIEW AND ANALYSIS

The Tatum Report

Review of the Report

The Tatum Law firm was hired by the City Manager (City of Austin) on November 15, 2019 to conduct an independent investigation as to the validity of allegations of discrimination and misconduct *within* the Austin Police Department. Three of the complaints filed with the Office of Police Oversight were anonymous and two of the allegations were filed by Commander Jason Dusterhoft.

The Tatum Report listed the following complaints and allegations to be investigated:

> The first anonymous complaint was filed against Assistant Chief Newsom and Chief Manley. It alleged that Assistant Chief Newsom had been using the "n---" word to describe African Americans for over a decade and his conduct was evidenced by text exchanges which Chief Manley was aware of. There was also an amendment to this anonymous complaint filed alleging that Assistant Chief Newsom was notified of the complaint against him for racist behavior before the investigation began, allowing him to retire and receive full retirement pay. Next, an anonymous complaint was filed regarding an anti-gay environment within APD, alleging Chief Manley supported the anti-gay mindset of Assistant Chief Gay in advocating the use of gay conversion therapy. Last, allegations were raised by Commander Jason Dusterhoft during his arbitration hearing which includes twelve instances of criminal or APD violations (7 allegations and 5 examples of disparate treatment or attempted retaliation) which he states were reported by him directly and to Assistant City Manager Rey Arellano. He also filed a complaint alleging failure to comply with subpoenas issued to Chief Manley, Chief of Staff Gay, Assistant Chief Newsom, and Assistant Chief Chacon for testimony or production of documents related to his arbitration hearing.

Ms. Tatum was not able to substantiate these allegations, and after numerous attempts and interviews, she was unable to obtain documents and evidence pertaining to the complaints under investigation. Some evidence was outside of the 180 Day rule and therefore not applicable and other documents were not able to be located by APD. Among the 74 interviews performed by Tatum Law, twenty of those individuals asked to be anonymous. There were several conclusions made by Ms. Tatum's team after conducting these interviews. One, there was a high level of fear of retaliation among active duty officers and unsworn staff. Second, there was an exceptionally low degree of expectation by these individuals that any investigation would reveal the truth based on past experiences. Last, there were doubts to the sincerity of City leadership to enforce changes necessary for APD to improve practices.

The theme of retaliation is evident throughout the interviews. These interviews also exposed how inconsistently complaints and officer misconduct are handled. The current policy allows for these matters to be resolved or dealt with in several different ways by different departments. Currently, the complaints or misconduct have the option to be handled by a direct Supervisor, Assistant Chief, Chief of Police, or Internal Affairs. Tatum Law advised that a "more uniform application of policy would result in more predictable and suitable outcomes." This will also help to prevent a discriminatory process in relation to disciplinary action. As an alternative, Tatum Law suggests APD address these reports through several avenues, including improved education, training, restructuring, re-assignment, and removal if necessary. In relation to the way officer conduct is handled, Tatum Law identified two policies in need of possible reform, the 180 Day Rule and the Meet and Confer Agreement.

Some other areas for improvement were pointed out through challenges faced by Tatum Law during their investigation. Another area where improvement was needed was with the Department's file management and retention system. Many documents requested in the investigation were not able to be located by APD. Also, Tatum Law suggests that "further training as it pertains to management training, and unconscious bias, racial, and cultural sensitivity training would be helpful to improve the current culture in the Department." Also, developing policies around the use of department issued property and equipment is necessary. A good start would be by implementing an electronic communications Code of Conduct and possibly an off duty social media policy. Finally, to provide further insight into the challenges that were presented from this investigation, Tatum

Law suggests it would be useful to gather more information to help identify trends within APD. Tatum Law feels this information "will enable City leadership to continue with a more focused direction of its mission of undoing racism as it pertains to APD."

Overview of the Report Recommendations

- Reevaluate the 180 Day Rule
- Reevaluate the Meet and Confer Policy
- Train all personnel on awareness of cultural sensitivities and racism
- Improve file management and retention
- Establish an electronic communications code of conduct
- Apply more uniform policies surrounding disciplinary actions

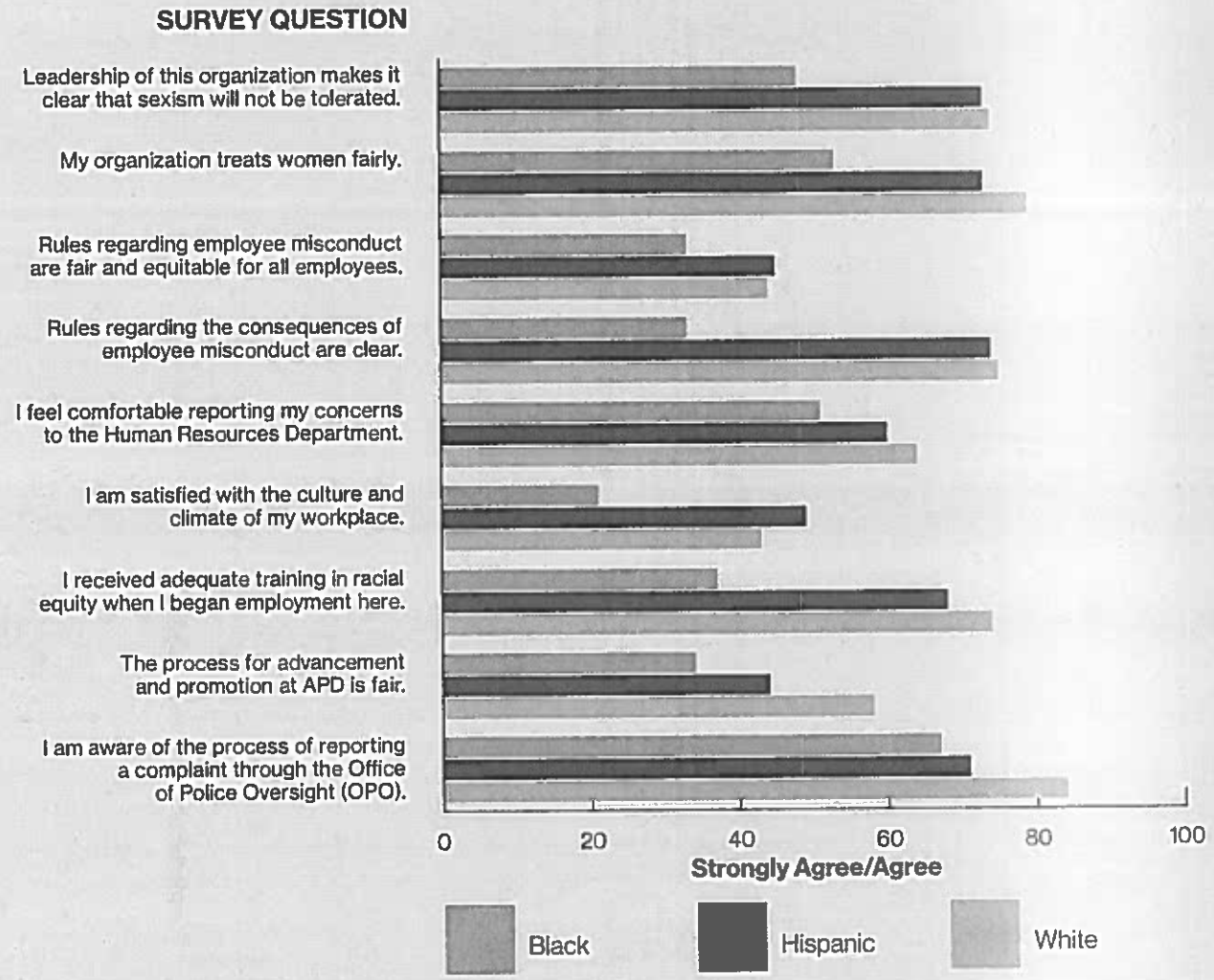
Key Observations/Comments from Interviews

- Through numerous individual and group interviews, JJC confirmed the Tatum report finding that some officers were reluctant to respond to consultants' questions. But others were transparent and forthcoming. Those who spoke freely opined that others were reluctant because they have seen no results after speaking with previous consultants and completing numerous surveys.
- Several high-ranking officers also expressed frustration with the Tatum report because they would have preferred more specific examples and strategies for addressing the disparities described.
- Throughout the Tatum interviews, reports by various ranking officers of different genders and races revealed that racist and sexist name calling, and the use of derogatory terms is persistent within the department. Many also expressed frustration that when reports of discrimination are made, there is no action, or they are held in excess for 180 days and then disregarded. Both officers and civilian staff interviewed expressed concern that complaints filed are handled unfairly and almost certainly comes with retaliation.
- The vast majority of JJC interviewees agreed with the Tatum findings listed above, which resulted in a lack of trust at APD, both internally and in terms of public image in the community. Many cited poor communications among employees as a contributing factor to mistrust. Some also said that employees who talked to the media not only lacked support but were victims of retaliation. In addition, a "code of silence" after the Newsome incident contributed to low morale. This mistrust has led to a view that the "Fifth Floor" supports the Union more than sworn officers.
- The Tatum Report recommended that the Department's file management and retention system be improved.
- When Tatum Law requested documents regarding evidence of disciplinary action, they were told they could not be found. With maintaining a more consistent file system the City could conduct audits assuring compliance with disciplinary policies.
- They felt that racial incidents were "swept under the rug" due to a poor management system. Others noted that the file management system is extremely antiquated; that paper files are kept in filing cabinets, and that files are not separated by race.
- Technology, such as more advanced forensics, is needed and should stay with APD because some aspects are only available to officers.
- Other systems that are automated do not talk to each other, making file retrieval cumbersome and time-consuming at best, especially when files are needed from multiple systems.
- Chief Manley took the lead on responding to the Tatum report, even though many of the charges were against him. The response and recommendations were pushed to the side or forgotten about. They didn't talk to HR.
- To achieve the cultural change necessary in the present climate, APD leadership at the top must have the political acumen, courage, strength, and awareness to get it done.
- The current structure of Human Resources is multilayered and limits effectiveness. One area needing improvement is more of a focus on what an individual should do if treated unfairly. Re-aligning divisions does nothing to address bias and racism.
- The Tatum report noted lack of defined professional development or career path.
- Some indicated that it is difficult for civilians and women in law enforcement.
- Women feel ignored at meetings and left out. As a civilian, they're treated as lower level employees. They feel like they are not part of the team.

Survey Data

There are eight survey questions that address directly or indirectly, issues related to the Tatum report. They are shown in the figure below. The responses range from an average of 2.86 to 4.06 on a five-point scale. (See Appendix A)

Figure 1: Internal Organizational Issues by Race/Ethnicity



Survey responses reflect that the experiences of White and Hispanic men are mostly positive and differ significantly from that of Blacks and Women.

Most notably, shown in Figure 1, Hispanic/Latinx and White respondents report more agreement with the climate of the workplace, equity training, fair advancement and promotion, the process for advancement, comfort reporting complaints and concerns, and the fairness of the rules than African American respondents. It is noteworthy that females do not think the organization treats women fairly compared to males. Moreover, females have somewhat less agreement with all internal organizational issues than men

These difference as they relate to the experiences of women and Blacks in APD, align with the overall findings in this report..

The Joint Report on Racial Profiling, Responses and National Data

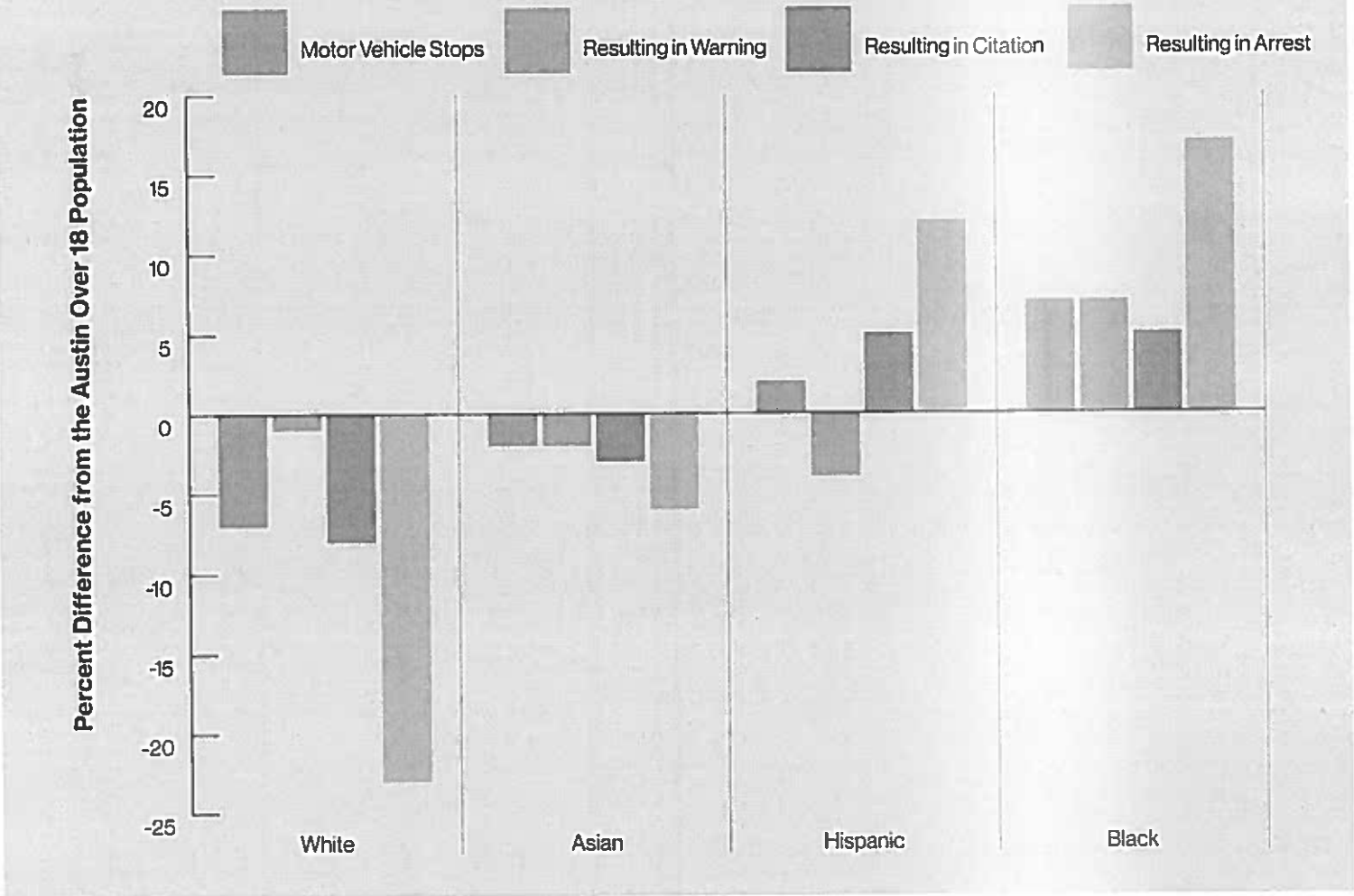
Austin Data

The Office of Police Oversight, the Office of Innovation and Equity Office issued a joint report on racial profiling (2020). That report contained information about motor vehicle stops, arrests, citations, warnings, and searches. The data were broken down by race/ethnicity and for the years 2015 to 2018. The figure above displays a summary of the data for 2018 because, with one exception, (fewer warnings for Hispanics/Latinxs) the pattern over the years is quite similar. Relative to their percentages in the driving age population, a higher percentage of African American drivers receive a higher percentage of stops, warnings, citations, and arrests than White drivers. They are followed by Hispanics/

Latinxs and Asians, relative to Whites. Warnings generally occur more to the West side of Austin and arrests more to the East side.

The telling difference between warnings vs. arrests in West and East Austin could suggest to some, a difference in driving habits of the minority communities on the East side. However, national data on differences in traffic stops at night vs. daytime suggests that the warning data and the very large differences in arrests between African Americans, and Hispanics/Latinxs compared to Whites are race related. The Austin data itself tell a similar story. Discretionary vs. non-discretionary stops resulting in citations or arrest in Austin suggests racial profiling (Goff, Obermark, LaVigne, Yahner, & Geller, 2016). Findings (shown in "Racial Profiling A") indicate higher officer discretionary stops and arrests for African American than White or Hispanic/Latinx drivers. Finally, data on stops, searches and resulting search/findings suggest race is a significant factor. Findings from APD's Racial Profiling Report indicate that traffic stops resulting in searches are higher for African Americans and Hispanics/Latinxs than Whites, relative to the percent driving age. Further the 4% difference in search/finding rates between African Americans and Whites does not explain the 41% difference in searches. Though less pronounced, the findings are similar for Hispanics/Latinxs vs.

Racial Profiling A: 2018 Percent of Racial/Ethnic Groups Profiled in Relation to Percentage in Population



*Data from Joint Report on Racial Profiling Charts 1, 2, 3 & 4

Whites. In addition, the Austin data from Goff and his colleagues (2016) indicate a higher search rate for African Americans then young Hispanics/Latinxs relative to Whites (more so when the race was known) but similar search/finding rates for the three groups.

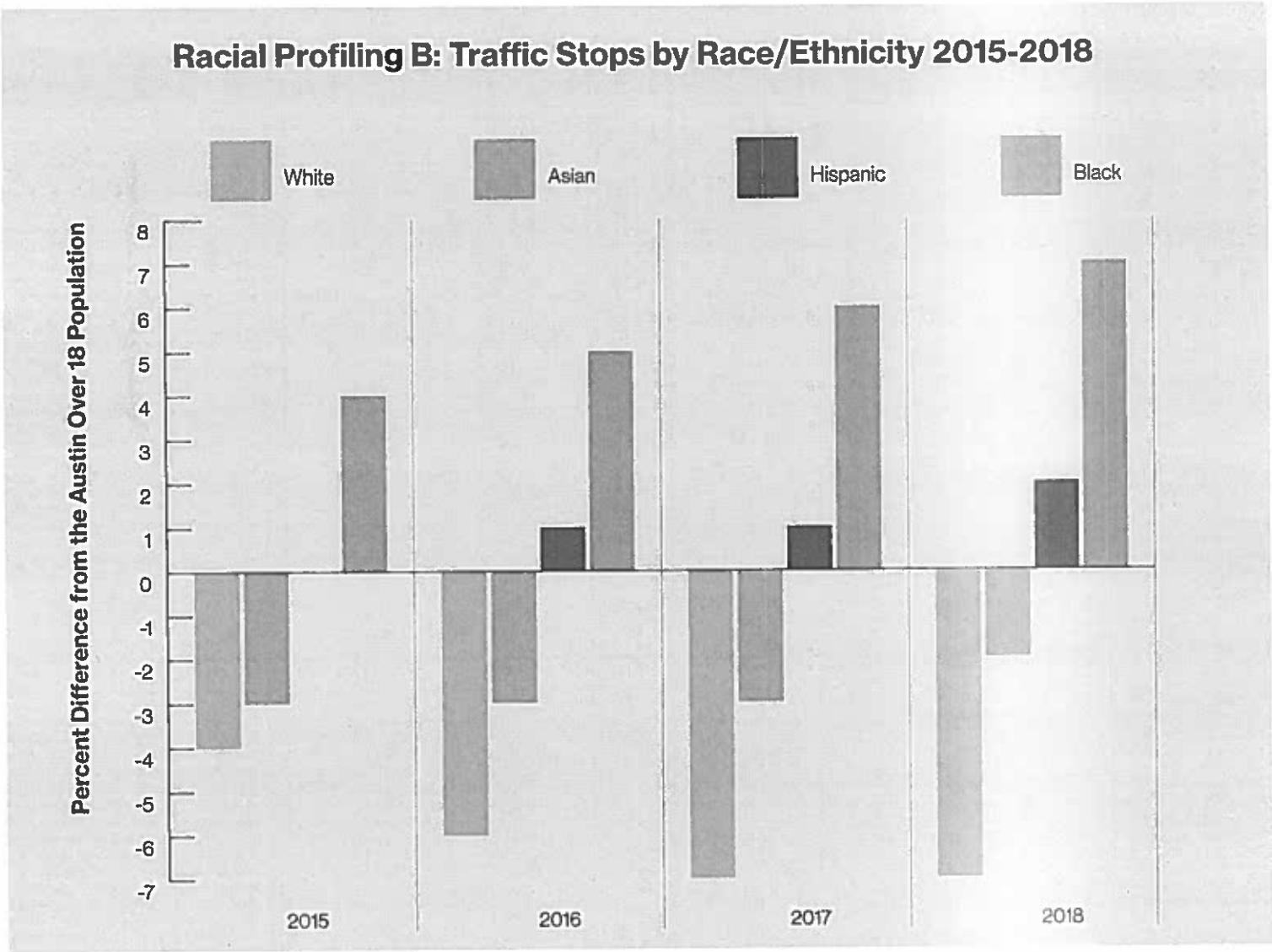
As a final note in this profiling section we show below in the figure that traffic stops have risen over the years for African Americans and Hispanics/Latinxs.

Overview of Recommendations

- Acknowledge that racial disparity exists and is worsening.
- Gain community trust and decrease racial disparity in all aspects of the report (traffic stops, arrests, citations, searches, use of force) yearly to arrive at zero racial disparity by 2023.

National Data

A large nationwide study is consistent with the Austin data and provides more context. Pierson and his colleagues (2020) found that African Americans were more likely to be pulled over for a traffic stop than Whites (over 100 million stops were assessed), yet this difference disappeared at night (the darker the sky, the less the disparity). Further, searches occurred less often for Whites, though they were more likely to be found with drugs than African Americans and Hispanics/Latinxs. Interestingly, where and when marijuana



*Data from Joint Report on Racial Profiling Report Chart 1

had been legalized for recreational use, the search threshold was higher for Whites. Other studies have found similar results for stops, searches, results of searches, and arrests (see references at the end for the original article or the policing and profiling link in a Balco 2020 article in the Washington Post for more information).

Key Observations/Comments from Interviews

- Most executive staff/management at APD are aware of the racial profiling data and acknowledged these disparities existed and are worsening.
- A small number of officers indicated that they had not seen instances of racism at APD and when asked about profiling specifically, thought that officers making traffic stops were doing so appropriately.
- In recruiting, there are those who look for ways to disqualify people. They take pride in ruling them out. They are comfortable making disparaging comments about women and Blacks. This has been going on for a long time.
- See APD Response to Racial Profiling below for citizen responses and more APD responses.

Responses to the Report

Response 1

January 14, 2020, Police Chief Manley submitted to City Manager Cronk, a memorandum that "unequivocally acknowledged that racial disparities are prevalent throughout many aspects of our City, including police enforcement actions."

This document listed the steps that had been taken to address the disparities within APD's purview over the last five years. Five of these steps addressed broad categories of collaborative improved analyses of disparity data, the use of available analytic frameworks and technologies (e.g., body cameras), and obtaining feedback from the community. Three addressed training, noting the use of implicit bias training for new recruits, hiring an expert to review the training, and improving diverse recruiting. Four addressed police profiling, improved policies concerning the use of force de-escalation and traffic enforcement. Three steps also addressed publishing an annual profiling report, contracting with an expert on racial profiling, the reduction of discretionary arrests, and the monthly workgroup with community members to explore disparities and enforcement actions.

Response 2

April 2, 2020, City Manager Crook responded to the Director of Police Oversight, Muscadin, Chief Innovation Officer O'Connor, and Chief Equity Officer, Oaks. The Memorandum and Power Point was in regards to gathering community input on the January 2020 Joint Report: Analysis of APD Racial Profiling Data. It was attended by 56 community members, 20 city staff, and 10 APD officers. The event began with a panel and presentation of the report by the authors and Chief Manley in a question and answer format. Following this, attendees were divided into five small groups for a facilitated discussion.

In general, community members were not surprised by the findings in the report because they fit with their experiences with the police in Austin. But they were surprised, discouraged, and saddened by the increasing disparity trend over the years in the report (see Racial Profiling B above). They also asked for additional data to help illuminate the reasons for the outcomes in the report and additional demographic information (a full listing of community feedback can be found by clicking the link on page 1 of the memorandum and by viewing the Power Point presentation associated with it). The community addressed several ways in which they wanted APD accountability: (1) **Acknowledgment** of the problem without being defensive, (2) **Commitment and Action** to make a change in accountability with some urgency, (3) **Structural Change and Community Decision Making,** specifically the need for community involvement in decision making, changing policy, a citizen's panel, and evaluating individual officers, (4) **APD Organizational Changes** aimed at holding leaders and individual officers accountable by having a monitoring system and real consequences for their actions, (5) **Budget** consequences if steps are not taken to address the racial disparities in the report, and (6) **Increased Transparency** from APD, the Office of Police Oversight, and the City of Austin.

Community members also provided input on training processes, the impact of mental health on the community, the importance of community involvement in decision making, and the need to prioritize the expertise of those who had lived the experience of police profiling. Finally, they requested actionable next steps for implementation and accountability.

This same memorandum requested that APD provide a written public response, acknowledge the existence of racial disparities, and align recommendations with community feedback.

They are as follows (Exploring best practices and training will be addressed in subsequent sections of this report.):

- Acknowledge that racial disparity exists and is worsening.
- Acknowledge that the methodology previously used omitted the context of proportionality and therefore was an incomplete analysis. This resulted in a perception that a trend of disparity did not exist.
- Acknowledge that race plays a major role in who is stopped by the police, searched, and for whom discretion is used favorably or unfavorably.

Response 3

April 22, 2020, Chief of Police Manley provided a response to recommendations through a detailed memorandum. The responses to recommendations 1-7 regarding racial profiling is reported in full below. The responses to recommendations 8-14 are more related to training and are reported in that section.

The purpose of this memorandum is to provide responses to the recommendations outlined in the joint report, as requested by the members of the Judicial Committee during its meeting on February 10, 2020. The Department's initial response, as well as the studies and reports referenced therein, provides additional context to this memorandum.

- *Recommendation 1: Acknowledge that racial disparity exists and is worsening.*

  The Austin Police Department consistently and unequivocally acknowledges that racial disparities exist throughout aspects of our city, including police enforcement actions. Accordingly, the Department has readily taken many steps to address the disparities within APD's purview over the past five years, as detailed in the January 14, 2020 response. Racial disparities have persisted despite these efforts, and the widening of certain gaps has raised additional concerns that demand further attention and analysis.

- *Recommendation 2: Acknowledge that the methodology previously used omitted the context of proportionality and therefore was an incomplete analysis. This resulted in a perception that a trend of disparity did not exist.*

  The primary purpose of APD's annual racial profiling report is to comply with state legislative mandates that require the reporting of specific data. Proportionality assessments are not compulsory. However, recognizing the importance of such information, APD collaborated with the Center for Policing Equity to conduct a comprehensive analysis of the racial disparities manifested in the Department's enforcement actions. The report was the first to apply the National Justice Database's independent analytic framework to police data made available through President Obama's Police Data Initiative, Measuring Fairness in the Austin Police Department. That report is posted alongside the Department's racial profiling reports on the City's website.

- *Recommendation 3: Acknowledge that race plays a major role in who we stop, search, and for whom we use discretion favorably.*

  The Department acknowledges that the outcomes of many police activities result in racial disparities. Additional data and analysis are necessary to determine how officer discretion, Departmental procedures, and societal factors contribute to these disproportionalities.

- *Recommendation 4: To gain community trust, proportional racial disparity in motor vehicle stops, arrests, searches, field observations, warnings, and citations should be zero.*

  The Department is committed to reducing racial disparities to zero, particularly disparities that are the result of officer discretion or inefficient police practices.

- *Recommendation 5: The official comprehensive analysis of racial profiling shall be conducted and released by the City of Austin Office of Police Oversight, although state-mandated reporting may continue under the purview of the Chief.*

  The Department will continue to release its state-mandated racial profiling report on an annual basis and welcomes the Office of Police Oversight's independent analysis and insight, in the manner the City Manager deems necessary and appropriate.

- *Recommendation 6: In order to uphold data integrity, accuracy, and transparency, officers should verify the racial and ethnic*

identity with people they stop. The verified data should be documented in officer reports and be published in the Racial Profiling data sets on the City's Open Data Portal.

In accordance with departmental procedures, Officers are required to document the race and ethnicity of the individuals they stop. The City has contracted with Dr. Alex Del Carmen, an expert on racial profiling and discrimination, to regularly audit the Department's racial profiling data to ensure accuracy in data collection and reporting. The traffic stop data, which includes race, is published in the racial profiling datasets on the City's Open Data Portal.

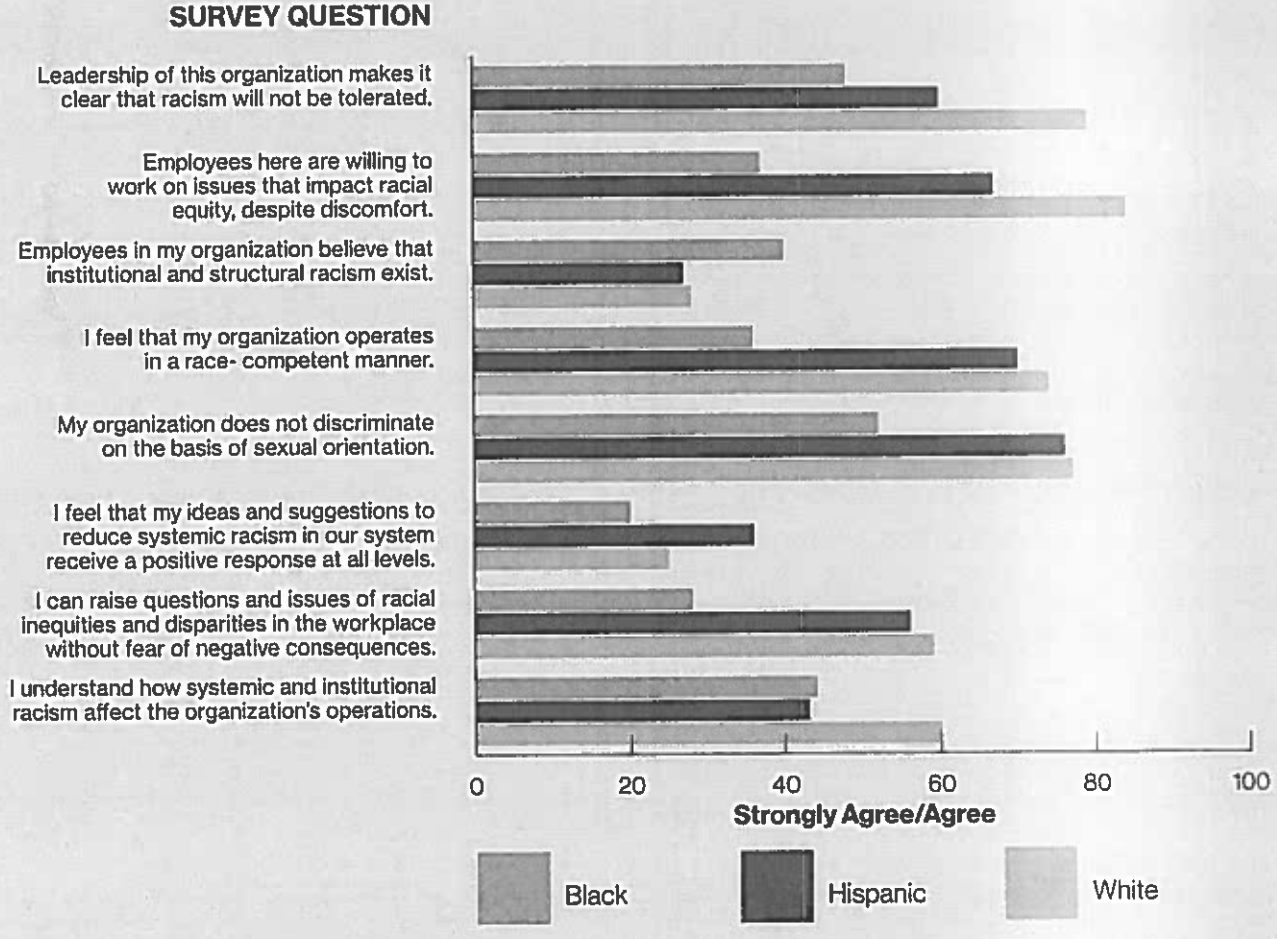
- *Recommendation 7: Analyze and report on the operational inefficiencies and costs that disproportionate racial disparities create by the second quarter of the fiscal year 2020 and provide to the City Manager and Council.*

Currently, the Department is not staffed or equipped to quantify and analyze this data but would readily collaborate with the City Auditor's office or another entity, at the direction of the City Manager.

Survey Data

The results of the questions on attitudes toward race and profiling showed generally positive results (averages ranged from 2.75 to 4.08 on a five-point scale. See Appendix A). However, when broken down by race and ethnicity, differences emerged and are

Figure 2: Attitudes Toward Race by Race/Ethnicity



shown in Figure 2. African Americans, compared to Hispanics/Latinxs and Whites, had the least agreement on every question concerning APD's understanding of how institutional racism affects the organization, feeling free to raise issues concerning racism without consequences, getting a positive response to their ideas and concerns, discrimination on the basis of sexual orientation, the organization operating in a race conscience manner, willingness to work on racial issues, and the tolerance of the organization toward racism. Women showed the same pattern of less agreement relative to men. Here again, these findings for African Americans and Women reflect the overall findings of this Report.

An additional observation from the survey is that across race and ethnicity, a low number of staff felt their ideas and suggestions for reducing systemic racism at APD were received positively. African Americans also responded higher to the question regarding employee beliefs that institutional and structural racism exist in APD.

Police Use of Force and Shootings

Austin Data

Goff and his colleagues (2016) also report data on use of force. The data indicate that the incident rate of use of force is greater for African Americans than Hispanics/Latinxs or Whites. The rate per 1,000 citizens ranges between .35 and .25 over the year for African Americans and below .10 for Hispanics/Latinxs and Whites over the year. The findings for the rates of use of force severity are also disparate between African Americans and Hispanics/Latinxs and Whites.

Of even more importance is that these researchers included neighborhood and demographic characteristics, crime rate, income, and percentage of African Americans and Hispanics/Latinxs in these neighborhoods in the models. Findings showed that residents in Austin neighborhoods with a higher percentage of African American or Hispanic/Latinx residents, those in poverty, and neighborhoods with higher crime rates, had disproportionate force and severity of force used upon them. When these possibilities other than race were adjusted statistically, African American and Hispanic/Latinx residents still experienced higher rates of use of force. The Austin Police Departments Research and Planning Unit (2017) also produced data on use of force (along with other measures). In this case as well, when the use of force from 2014 to 2016 by race and ethnicity was compared to the population, African Americans and Hispanics/Latinxs had disproportionate force used upon them relative to Whites. Control variables such as crime, poverty and neighborhood were not used. Officer involved shootings (OIS) do not occur frequently within APD (Officer Involved Shooting Report, 2018). In 2018 there were twelve incidents of officer involved shootings. Among the 12 shootings, over half were found to have a mental illness component. Five of the twelve (OIS) incidents resulted in fatalities. All five suspects were African Americans or Hispanics/Latinxs.

National Data

Police shootings and use of force evidence is similar nationally. Edwards, Lee and Esposito (2019) report in the Proceedings of the National Academy of Sciences that the police shooting database indicates..."that between 2013 and 2018, Black men were about 2.5 times more likely than White men to be killed by police, and that Black men have a 1-in-1,000 chance of dying at the hands of police. Black women were 1.4 more times likely to be killed than White women. Latino men were 1.3 to 1.4 times more likely to be killed than White men. Latina women were between 1.2 percent and 2.3 percent less likely to be killed than White women." Further, several findings in different cities in the U.S. have found that force is more likely to be used against African Americans than Whites.

Key Observations/Comments from Interviews on Use of Force

- No accountability is required for not using body cams.
- The department has an "us versus them" mentality and thinks of some communities as adversarial.

Recommendations on Police Shootings and the Use of Force by the Office of Police Oversight

- Increase the OPO access to OIS shooting incident data.
- Publish annual reports related to OIS incidents.
- APD should acknowledge and address:
  - Number of OIS incidents involving a mental health component
  - The fact that only Blacks or Latinxs were the subject of fatalities caused by police
  - The fact that the majority of OIS incidents involved people from the Hispanic/Latinx community

- The fact that "less lethal" force was only used in one incident prior to deadly force

- Increase education for patrol officers on de-escalation, response to resistance, and crisis intervention.
- Ensure mental health response training, policies and procedures follow best practices and address shortcomings.

Survey Data

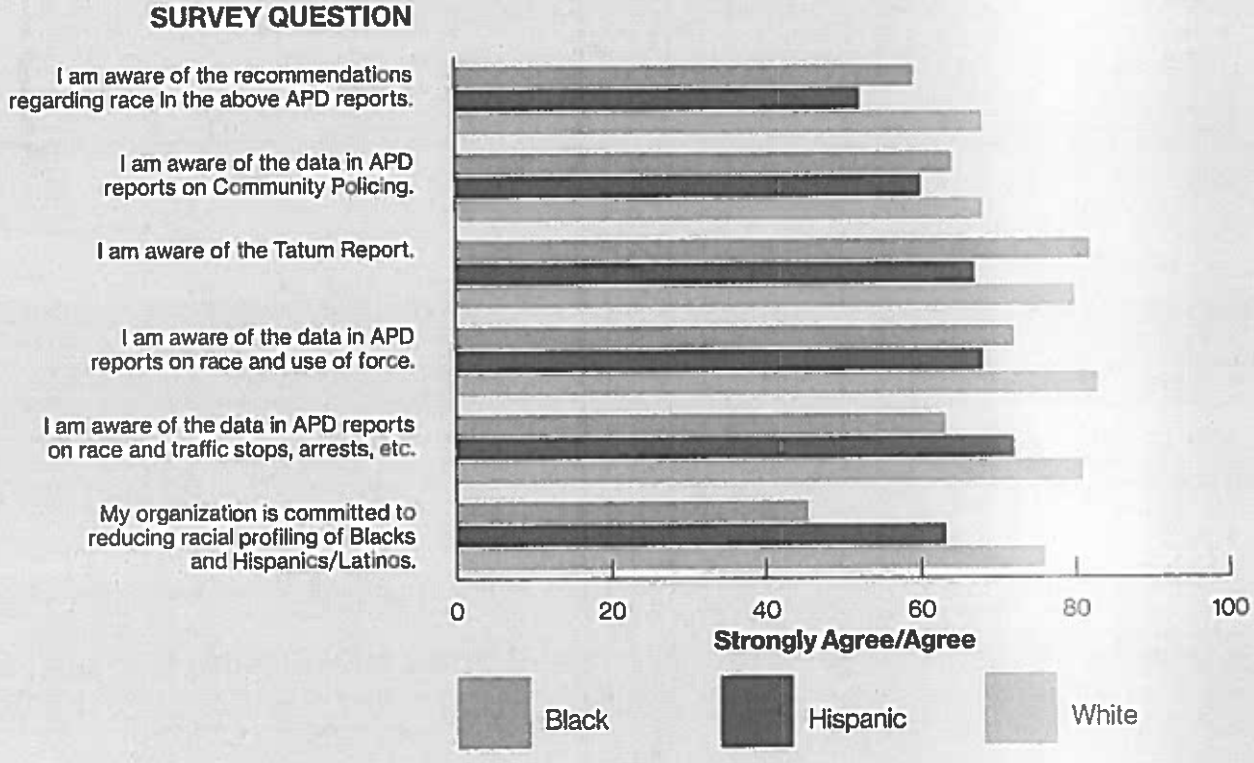
This section of the survey relates to the awareness of APD data in this report. The questions are shown in Figure 3. Generally all participants in the survey report a high level of awareness of the Tatum Report, and similar awareness of community policing. Of note is that African Americans are slightly more aware than Whites of the Tatum Report, which could speak to seeing their concerns documented in the report. They also speak to the overall findings of this Report. White respondents showed the highest level of awareness of the remaining questions shown in the graph. Finally, civilians were not as aware as sworn employees.

Police Training

Austin Data

The Training Academy is eight months long. Dr. Villanueva (2020) provides a review of the Training Academy and a framework for her analysis. It is referred to as a Strengths, Weaknesses, Opportunities and Threat analysis (SWOT). Strengths include organizational leadership, the hierarchical structure producing stability, the culture, though paramilitary, is viewed as none-the-less informal, and the movement toward more ethnic and racial diversity and inclusivity. Parts of the curriculum (currently under review) and teaching effectiveness are considered strengths as well. The diligent adherence to difficult scheduling

Figure 3: Data and Reports Awareness by Race/Ethnicity



and compliance with requirements and standards are listed as strengths. Instructors are viewed as well prepared and organized. Discussed later in this document, some findings do not coincide with the interviews that were conducted for the present report.

Weaknesses were found in the organizational structure, culture, curriculum, and teaching effectiveness as well. Process improvement is needed around a variety of areas of communication, the organization of course material, and the scheduling and course alignment. These were found to be weaknesses of the organizational structure. In the area of culture, weaknesses were noted in the paramilitary training format in that it leads to high drop-out rates, less attention to different learning styles, and inconsistency with a community policing philosophy. Diversity among the faculty and teaching methods were also noted as weaknesses and the current curriculum is being reviewed. Teaching effectiveness weaknesses were noted. Namely, trainers' job descriptions do not include any expectations of training in teaching methods or evaluations of the effectiveness of those methods. Further, resources regarding effective teaching methods are unavailable. Finally, the 80% passing standard along with related practices and procedures should be reviewed.

Opportunities include adopting an adequate Learning Management System, moving away from a paramilitary culture and warrior mindset to a more guardian view that is consistent with community policing and the value "to protect and to serve." Various types of training are suggested along these lines.

The issue of race and ethnicity in policing is regarded as a cause of concern and a number of efforts are underway to address this issue. The courses currently taught are under substantial review about content of teaching, content of materials, current scholarly literature, and effective delivery of the material. Meeting the diverse needs of both the community and the organization are paramount. Noting that women and faculty of color are under-represented in the academy, recruitment will be closely examined.

Since many of the existing courses are mandated by law, courses will be reviewed, and a series of evidenced-based practices will be included to help officers navigate encounters with community members while helping the officers build emotional regulation and strength tolerance. To that end, academy instructors will need the training, experience, and resources necessary to achieve teaching excellence.

Threats listed are (1) socio/political climate and political unrest, (2) negative police/community relations, (3) shortage of recruits, (4) economic/financial/budgetary constraints, (5) internal morale, (6) internal discord, (7) negative perceptions by the public/media, and (8) lack of real or perceived support.

National Data

The Governing data website provides data on the demographic composition of police departments in the United States. According to the data found in the reports on the site, Whites are overrepresented while African Americans and Hispanics/Latinxs are underrepresented in varying degrees in the majority of larger police departments (race and ethnicity data on this website can be reviewed city by city). Further, according to a survey by Crime and Law Enforcement (2019), women make up only 12.6 % of full-time police officers in the United States. As the President's Task Force on 21st Century Policing (2015) points out, a tolerance and understanding of these racial and ethnic groups as well as the LBGTQ community is essential to improved training (and of course, recruitment).

Dr. Villanueva Recommendations

- Transform para-military structure to Adult Learning model
- Incorporate implicit bias evaluations into recruitment process
- Increase diversity in teaching faculty
- Include simulations and role plays that pertain to difficult cultural or racial situations
- Establish a community placement opportunity for cadets to begin building relationships with community

Key Observations/Comments from Interviews Regarding Training and Advancement

There is no mechanism for cadets to complain above their Instructor/Counselor (IC) even if the IC is the person who abused them.

- Resignations/firing Black officers after training
- Insufficient mental health training
- Insufficient training on trauma-informed care

- Numerous former cadets stated that they were verbally, psychologically, and physically abused in the academy, and that they observed the same for their classmates.
- Certain cadets are targeted and pressured relentlessly, then asked to resign or be fired. In the latter case, they would likely be banned from future law enforcement jobs in the whole state.
- The academy curriculum glosses over the subject of diversity, taught by all-White instructors.
- Academy has a high level of attrition of Black cadets
- Some Black cadets are prepared, and some are under-prepared for the academic rigor of the academy. This could be a historical failure of the school educational system, resulting in an achievement gap.
- Choice of videos in training academy promotes warrior mentality
- Cadets suffer "death by Power Point" in academy
- SWOT analysis was conducted by Dr. Villanueva, but staff did not receive feedback
- Lack of community engagement during the academy
- Questionable reasons for disqualifying cadet applications: credit score; smoking weed in high school; hairstyle
- The police department has not done a very good job of awareness of the need for racial and gender equity. Beliefs such as women cannot police have permeated the department since the 1930s.
- Some would prefer officers to be recruited and or trained in psychology and empathetic understanding.
- The academy has no specific mentorship program for African Americans that mirrors the female mentorship program.
- Marketing might attract more recruits of color.
- Most officers take a substantial pay cut to teach in the academy. They lose night shift stipends, and ability to make overtime.
- Support adding the history of policing course to the academy. What APD was doing before was inadequate regarding history of policing. The curriculum is in place for the next cadet class through the University of Texas for an 8-hour class.
- They are planning to use the Beyond Diversity curriculum from the LBJ school for their diversity training (separate from history of policing class.)
- What needs to change is militaristic training
- There is a lack of a clearly defined career path
- One individual thought there was a negative reaction to Undoing Racism training by some
- There is a need to develop a formal mentoring program led by APD for African Americans
- Training for new supervisors includes HR: Policy, Workers Comp, FMLA, Annual Performance Reviews, and so forth.
- 30 sergeants and 20 corporals are currently going through supervisor training. The class is 2 weeks, with an additional accountability class. There is no specific curriculum included on data showing the racial inequities in APD that officers going into leadership positions should be aware of.
- For the academy, the ICs are responsible for academic support if needed.
- Every officer must have 40 hours every 2 years. TCOLE will mandate some, but other hours are at the discretion of the department. Re-certification is required every two years.
- The motto of the academy is, "I am my brother's keeper." That culture ought to shift. The highest level of diversity is at the officer level and that needs to be spread throughout the agency.
- African Americans are lacking sufficient numbers in high positions to support what some interviewees called "succession planning" to help them do well on tests for promotion which Whites and Latinos have. Rather, many stated the existence of a "good old boy network" that continues the cycle of promoting White males. For example, there are no Black Commanders and only one Black Assistant Chief.
- The videos that cadets view have a disproportionate number of Black people involved in violent crime, which not only shapes the minds of White officers, but also does something to the psyche of Black and Brown people that their own people are dangerous.
- Interviewees mentioned a lack of awareness of and sensitivity to Black history and culture in the Department. There are too many recruitment disqualifiers as well. For example, they said that Black hairstyles for men and women have been disqualifying factors in the application process. Other disqualifying factors of Black candidates, such as bad credit score; having been evicted, and having smoked weed in high school should be taken into consideration as the result of intergenerational effects of economic exploitation and racial trauma.

Community Responses to Training: (From the Responses to the Joint Report on Police Profiling)

- Include implicit bias testing in the Austin Police Department hiring process.
- For current employees, require implicit bias testing and flag high-scoring officers for appropriate intervention.
- Identify and implement bias-countering policies, practices, methods, processes, and standard operating procedures to mitigate bias.
- Include the comprehensive Racial History of Policing curriculum in the cadet training academy and adapt it into required training for existing officers, at all ranks, annually.
- Follow the guidelines for racial equity training established by the Equity Office. The Equity Office and Office of Police Oversight shall be consulted for final selection of official racial equity training for officers at all ranks.
- Develop a method to provide racial equity training on an ongoing basis (a minimum of 40 hours per year) for all staff, sworn and civilian, in the department, annually, during every year of service.

Response 3

(continued from page 8. April 22, 2020, Chief of Police Manley remaining responses to recommendations in the Joint Report on Racial Profiling: these 7 remaining responses are placed here because they relate more to training)

- *Recommendation 8: Explore promising practices from Oakland and Nashville that use a scoring mechanism for disproportional behavior to identify at-risk officers and assign appropriate interventions and use in the determination of promotions.*

  The Department agrees the City should invest in sophisticated oversight tools that are more adept at identifying, flagging, and tracking at-risk officers in order to facilitate timely and effective interventions.

- *Recommendation 9: Include implicit bias testing in the Austin Police Department hiring process.*

  Based on the best available evidence from subject-matter experts on bias, the Department operates with the understanding that every applicant will have implicit biases. Therefore, the Department administers training to ensure all employees are aware of their biases, promulgates explicit policies to set clear expectations that bias-based actions are intolerable, and utilizes oversight mechanisms to identify inappropriate behavior.

- *Recommendation 10: For current employees, require Implicit Bias testing and flag high scoring officers for appropriate intervention.*

  As stated above, the Department has mechanisms in place to identify and rectify inappropriate behavior. Additionally, the Department is open to exploring proven, evidence-based testing methods that are capable of effectively supplementing current training, policies, procedures, and audits.

- *Recommendation 11: Identify and implement bias-countering policies, practices, methods, processes, and standard operating procedures to mitigate bias.*

  The Department recommends the City contract with a suitable academic institution to conduct an independent, comprehensive, and evidence-informed assessment of the Department's enforcement practices, cultural norms and customs, training, accountability procedures, and any resulting racial disparities. A similar partnership between the City of Oakland and Stanford University yielded promising results and provided a roadmap for creating community-based strategies aimed at addressing the unique historical and cultural challenges of a city: Data for Change & Strategies for Change.

- *Recommendation 12: Include the comprehensive Racial History of Policing curriculum in the cadet training academy and adapt it into required training for existing officers, at all ranks, annually.*

  The Department intends to incorporate the Racial History of Policing training in future cadet class and is determining the best approach and frequency for administering the training to existing officers.

- *Recommendation 13: Follow the guidelines for racial equity training established by the Equity Office. The Equity Office and Office of Police Oversight shall be consulted for final selection of official racial equity training for officers at all ranks.*

The Department is committed to following the established guidelines for racial equity training and welcomes input from the Equity Office and Office of Police Oversight.

Recommendation 14: Develop a method to provide racial equity training on an ongoing basis (a minimum of 40 hours per year for all staff, sworn and civilian, in the department, annually, during every year of service).

The Department is eager to provide additional racial equity training for all employees in an effective, feasible, and sustainable manner. The Department will consider this recommendation as part of the FY21 budget process.

Community Policing

Austin Data

One of the goals of community policing involves citizens having an active role in policing. In Austin, that translates to District Representatives and other support positions to enable citizens to have a role in supporting and working with the police: Community meetings and gatherings are attended, foot, bicycle, and horse patrol are used in targeted areas (especially the entertainment district). Currently, that role may shift somewhat with the reallocation of resources.

Two Reports were reviewed that address community policing in Austin. The first, Community Policing Advancement in Austin (2020) was a response to the staffing report needs assessment provided by the Matrix Consulting Group and describes Austin's community policing scope of work. The response provides several recommendations too numerous to list here. However, those related to the nature of the current report are the inclusion of pedestrian stops and field interviews in the yearly police profiling report, developing a marketing plan for community policing, greater funding, developing an evaluation plan, and performance measures.

Additionally, the report recommends developing a recruiting and training plan for community policing, revising job classifications that reflect community policing principles, the creation of neighborhood portfolios, consideration of a field training program, supporting neighborhood events, consideration of non-English speaking populations, and the consideration of officer volunteers and community youth.

Community Policing Matrix Report 2020 Key Recommendations

- Develop Community Policing theme that highlights the philosophy as a major focus of Academy training
- Send exit interviews of cadets and trainees directly to HR
- Explore the use of problem-solving based learning methodology
- Produce a recruiting video more aligned with community policing

Community Policing/Advancement in Austin 2020

APD's response to the Community Policing Matrix Report can be found on pages 31-36 of the report itself. The column on the right indicates which responses have and have not been implemented.

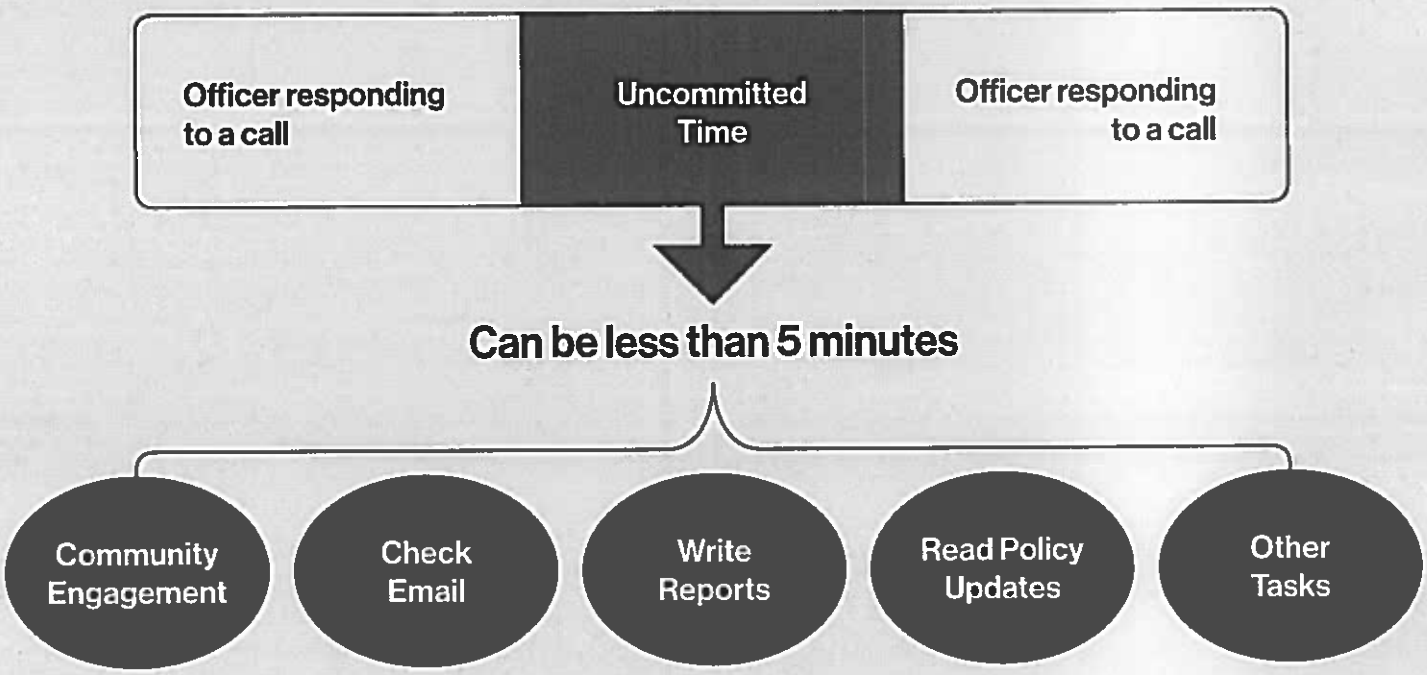
The second report is by the City Auditor (2020), and is entitled, The Impact of Community Policing Efforts. The report provides two types of analyses. The first is an analysis of the time officers have available to engage with the community (Figure 4 below).

As shown in Figure 4 (next page), Officers' uncommitted time when they are not responding to a call can be less than 5 minutes per shift during which they also check e-mail, write reports, read policy updates, and engage in other tasks. Clearly this is not an ideal situation. The second analysis is an employee survey conducted to determine if perceptions had changed since the initial matrix was conducted in 2016. Results were mixed and can be found on pages 13-16 of the report. The percentage change between pre/post is shown on the right side of the page.

National Data

A variety of opinions exist about the value and effectiveness of community policing, dependent in many instances on the makeup of the community. Nationally, the population is 72 percent White, and 13 percent Black. And the US police force is 75 percent White and 12 percent Black. Asians and Latinos have smaller numbers of representation nationally (Vitale, 2018). From a macro perspective, this means that many White officers who live in White communities are patrolling non-White communities, where they don't live. The old school effective models of community policing entailed officers living in the areas where they work and intermingling with their neighbors. For this reason, Vitale (2018) argues that community policing today does little to empower communities, reduce over-policing in marginalized communities, or to reduce crime.

Figure 4: Estimated Available Time Community Policing: City of Austin Audit Report 2020



The President's Task Force on 21st Century Policing (2015) is favorable toward community policing done correctly. Crowl (2017) provides a review of the evidence surrounding Community Policing over the years. He enlists only studies with quality methods in his results. He notes that although Community Policing has many definitions and objectives, it attempts to address the conditions that enable public safety such as crime, social disorder, and fear of crime (Crowl, 2017), often in poorer communities of color. To accomplish this, it attempts to empower citizens to have an active role in working with the police. In the Crowl (2017) review, he shows that Community Policing has been found to be effective in high quality studies in reducing fear of crime (56.3% of the studies reviewed), citizen satisfaction (66.7% of the studies reviewed), fostering police legitimacy (77.8 % of the studies reviewed), improving job satisfaction (90% of the studies reviewed) and to some degree crime reduction (only 18.6% of the studies reviewed). These two views above are deserving of more attention, considering the comments below.

Key Observations/Comments from Interviews

- Poor communication with the community
- Community Policing not practical with current workload on patrol
- It would be good to have the same spirit of care for fellow officers to be infused into the communities they serve.
- Similar to interviewees, views that communication with the community in general is poor, community engagement during the academy was also lacking. Rather, interviewees said that community representatives spoke in class, and cadets prepared follow-up written reports, without ever actually going to communities.
- A number of interviewees elaborated on their perspective of the shortcomings of Community Policing in Austin. Black and Latinx officers noted that the current climate of mistrust for police in general puts them at a disadvantage with their own people when they are seen with the badge, gun, and blue uniform. Consider an example of parking on the street. Officers of

color who patrol in poor communities of color are aware of the residents saying that they are skeptical of the officer's sincerity for their well-being when asking them to comply with laws in their communities, when they know that in a nearby White neighborhood, residents are allowed and even encouraged to do the same non legal actions with no consequences, such as parking on the street. Since trust—a prerequisite for the development of a healthy relationship—is lacking in this example and others, trust will need to be restored in advance of effective community policing.

- Assignment to specialty units like community policing is not a fair process for African Americans.
- Community policing should be accomplished through true partnership with the community and a sense of restorative justice. That is, bringing together people harmed, and those responsible for harm and harm prevention in a safe and respectful way.

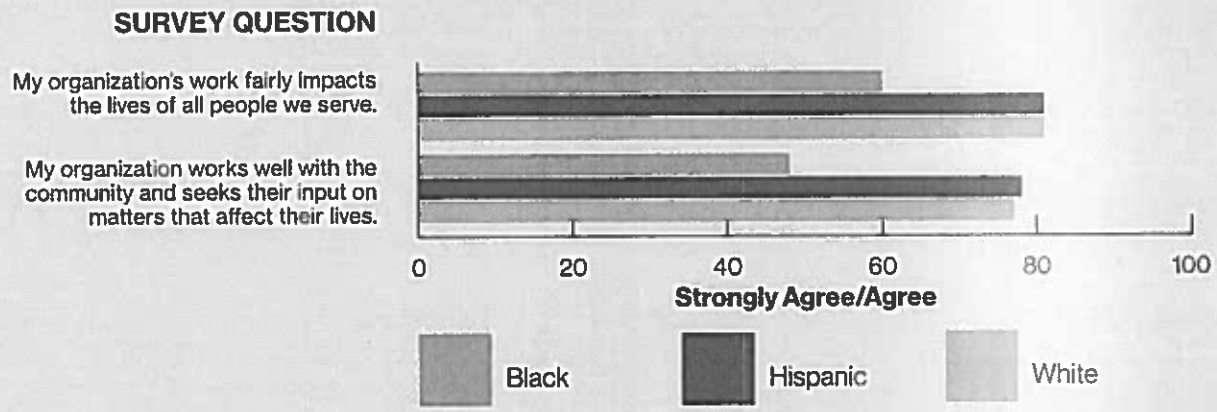
Survey Data

The two questions for this part of the survey are shown in Figure 5 below. Clearly the workforce values the communities they serve (means range from 4.07 to 4.14 on a 5-point scale—Appendix A). Questions were analyzed by race, ethnicity, and gender. Race is shown in the figure. Generally, it shows that a majority of respondents agreed with both statements, though African American are less likely to agree. This is again consistent with the overall findings of this Report.

CONCLUSION

This report provides key findings, recommendations and responses to the JJC team's review of multiple reports related to racial inequities that exist in the culture of APD, and the impact on internal and external stakeholders. Additional information from surveys, interviews with sworn and civilian staff, community members, and participants in the Groundwater Analysis workshop, provide a comprehensive analysis of the trends that speak to a long history of institutional and structural racism in the APD culture. These findings have informed the recommendations and beginning road map, that if implemented, have implication for beginning a journey towards creating an APD anti-racist institutional culture. The review of the reports, interviews and survey data all indicate that change in the Austin Police Department requires an immediate response. The Texas Model serves as the framework for the recommendations outlined in this report. It has proven to be effective in reducing racial inequities and improving outcomes for all populations. This is the ultimate goal of anti-racist work.

Figure 5: Community Policing by Race/Ethnicity



REFERENCES

Balco, R. (2020). There is overwhelming evidence that the criminal justice system is racist. Here's the proof. *The Washington Post*, June 10.

Crowl, J.N. (2017) The Effect of Community Policing on Fear and Crime Reduction, Police Legitimacy and Job Satisfaction: An Empirical Review of the Evidence. *Police Practice & Research 18*, no. 5 449–462.

DeMatthews D, (2016). *Effective Leadership is Not Enough: Critical Approaches to Closing the Racial Discipline Gap.* The Clearing House: A Journal of Educational Strategies, Issues and Ideas. Volume 89, 2016 - Issue 1, n1 p7–13.

Goff, P., Obermark, D., La Vigne, N., & Yahner, J. (2016). *The Science of Policing Equity. In Policy File.* Urban Institute.

James, J., Baumann, D. J., Rodriquez, C., Craig, S., & Kathan, S. (In Press). Creating Comprehensive System Reform to Reduce Disproportionality and Disparities: The Texas Community Engagement Model. In *Racial Disproportionality and Disparities in the Child Welfare System, Child Maltreatment Series*, Vol. 11, Alan J. Dettlaff (Eds): 978–3–030–54313–6, 466762_1_En, (Chapter 20)

Brown. K. M. (2006). Leadership for Social Justice and Equity: Evaluating a Transformative Framework and Andragogy. *Educational. Administration Quarterly, Volume 42 Issue 5*, December, page(s): 700–745

The Matrix Consulting Group, (2016). *Final Report on Community Policing.* Prepared for the Austin Police Department https://www.austintexas.gov/sites/default/files/files/Police/Austin_Community_Policing_Report_7-21_–_Final.pdf

Office of Police Oversight, Office of Innovation, Equity Office (2020). Joint Report: *Analysis of APD Racial Profiling Data.* Austin, Texas

Pierson, E., Simoiu, C., Overgoor, J. et al. (2020) A large-scale analysis of racial disparities in police stops across the United States. *Nat Hum Behav* 4, 736–745 https://doi.org/10.1038/s41562-020-0858-1

President's Task Force on 21st Century Policing (2015). *Office of Community Oriented Policing Services.* Washington D.C, Department of Justice, May

Merriam, S. B (2008) *Third Update on Adult Learning Theory: New Directions for Adult and Continuing Education, NO. 119.* Jossey-Bass, San Francisco, CA, 2008. 96 pages.

The Tatum Law Practice (2020). *Austin Police Department Independent Investigation Fact Investigation*

Taylor, Edward W. *Transformative Learning Theory. New Directions for Adult and Continuing Education*, n119 p5–15 Fall 2008. http://www.anitacrawley.net/Resources/Articles/TaylorTransformative%20Learning%20Theory.pdf

Villanueva, S. (2020). *Review Analysis and Strategic Plan.* Austin Police Department Training Academy. Austin, Texas

Vitale, Alex. 2018. *The End of Policing.* London, England. Verso Books.

Racial Inequities and Institutional Racism:

A Report Submitted to The City of Austin Equity Office and The Austin Police Department



November 2020

APPENDIX A:
APD Climate Assessment Survey

APPENDIX A: APD CLIMATE ASSESSMENT SURVEY

STATEMENT	STRONGLY AGREE	AGREE	NEITHER AGREE nor DISAGREE	DISAGREE	STRONGLY DISAGREE	TOTAL % (N)	AVE
Internal Organization Issues (1,2,3,17,18,20)							
1. I am satisfied with the culture and climate of my workplace.	11.96% (N=100)	29.55% (N=247)	12.92% (N=108)	23.33% (N=195)	22.25% (N=186)	85.13% (N=836)	2.86
2. I received adequate training in racial equity when I began employment here.	44.22% (N=371)	26.10% (N=219)	14.30% (N=120)	10.01% (N=84)	5.36% (N=45)	85.44% (N=839)	3.94
3. The process for advancement and promotion at APD is fair.	22.38% (N=188)	32.62% (N=274)	19.88% (N=167)	15.36% (N=129)	9.76% (N=82)	85.54% (N=840)	3.42
17. I am aware of the process of reporting a complaint through the Office of Police Oversight (OPO).	37.74% (N=314)	41.71% (N=347)	10.70% (N=89)	8.17% (N=68)	1.68% (N=14)	84.73% (N=832)	4.06
18. I feel comfortable reporting my concerns to the Human Resources Department.	28.88% (N=240)	31.41% (N=261)	17.09% (N=142)	13.12% (N=109)	9.51% (N=79)	84.62% (N=831)	3.57
20. Rules regarding employee misconduct are fair and equitable for all employees.	18.03% (N=150)	23.20% (N=193)	15.63% (N=130)	22.72% (N=189)	20.43% (N=170)	84.73% (N=832)	2.96
Attitudes (Gender, Race, Sexual Orientation) 4,5,6,7,8,9,13,14,15,16							
4. My organization treats women fairly.	42.55% (N=357)	32.90% (N=276)	13.35% (N=112)	7.63% (N=64)	3.58% (N=30)	85.44% (N=839)	4.03
5. I understand how systemic and institutional racism affect the organization's operations.	25.12% (N=206)	30.61% (N=251)	28.41% (N=233)	5.98% (N=49)	9.88% (N=81)	83.50% (N=820)	3.55
6. I can raise questions and issues of racial inequities and disparities in the workplace without fear of negative consequences.	26.59% (N=222)	27.54% (N=230)	21.92% (N=183)	14.13% (N=118)	9.82% (N=82)	85.03% (N=835)	3.47
7. I feel that my ideas and suggestions to reduce systemic racism in our system receive a positive response at all levels.	13.78% (N=113)	13.54% (N=111)	57.68% (N=473)	8.90% (N=73)	6.10% (N=50)	83.50% (N=820)	3.2
8. My organization does not discriminate on the basis of sexual orientation.	47.66% (N=397)	27.01% (N=225)	15.37% (N=128)	6.36% (N=53)	3.60% (N=30)	84.83% (N=833)	4.09
9. I feel that my organization operates in a race-competent manner.	37.30% (N=310)	31.41% (N=261)	17.21% (N=143)	9.99% (N=83)	4.09% (N=34)	84.62% (N=831)	3.88
13. Employees in my organization believe that institutional and structural racism exist.	5.90% (N=49)	21.33% (N=177)	34.70% (N=288)	17.95% (N=149)	20.12% (N=167)	84.52% (N=830)	2.75
14. Employees here are willing to work on issues that impact racial equity, despite discomfort.	25.51% (N=211)	41.11% (N=340)	22.61% (N=187)	7.86% (N=65)	2.90% (N=24)	84.22% (N=827)	3.78
15. Leadership of this organization makes it clear that racism will not be tolerated.	41.08% (N=341)	28.80% (N=239)	13.86% (N=115)	9.52% (N=79)	6.75% (N=56)	84.52% (N=830)	3.88
16. Leadership of this organization makes it clear that sexism will not be tolerated.	42.67% (N=355)	29.33% (N=244)	14.66% (N=122)	8.05% (N=67)	5.29% (N=44)	84.73% (N=832)	3.96

APPENDIX A: APD CLIMATE ASSESSMENT SURVEY

STATEMENT	STRONGLY AGREE	AGREE	NEITHER AGREE nor DISAGREE	DISAGREE	STRONGLY DISAGREE	TOTAL % (N)	AVE
Data & Reports Awareness (10,21,22,23,24,25)							
10. My organization is committed to reducing racial profiling of Blacks and Hispanics/Latinos.	44.65% (N=371)	26.71% (N=222)	20.10% (N=167)	5.78% (N=48)	2.77% (N=23)	84.62% (N=831)	4.05
21. I am aware of the data in APD reports on race and traffic stops, arrests, etc.	36.82% (N=306)	43.56% (N=362)	13.24% (N=110)	5.17% (N=43)	1.20% (N=10)	84.62% (N=831)	4.1
22. I am aware of the data in APD reports on race and use of force.	36.10% (N=300)	42.48% (N=353)	13.96% (N=116)	6.14% (N=51)	1.32% (N=11)	84.62% (N=831)	4.06
23. I am aware of the Tatum report.	29.72% (N=247)	49.58% (N=412)	10.35% (N=86)	6.74% (N=56)	3.61% (N=30)	84.62% (N=831)	3.95
24. I am aware of the data in APD reports on Community Policing.	26.39% (N=219)	39.76% (N=330)	19.16% (N=159)	12.65% (N=105)	2.05% (N=17)	84.52% (N=830)	3.76
25. I am aware of the recommendations regarding race in the above APD reports.	19.61% (N=163)	43.08% (N=358)	22.38% (N=186)	11.79% (N=98)	3.13% (N=26)	84.62% (N=831)	3.64
COMMUNITY (11,12)							
11. My organization works well with the community and seeks their input on matters that affect their lives.	40.38% (N=336)	36.54% (N=304)	14.78% (N=123)	6.37% (N=53)	1.92% (N=16)	84.73% (N=832)	4.07
12. My organization's work fairly impacts the lives of all people we serve.	45.07% (N=375)	34.74% (N=289)	11.18% (N=93)	7.09% (N=59)	1.92% (N=16)	84.73% (N=832)	4.14

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APPENDIX B:
Community Engagement Model

APPENDIX B: COMMUNITY ENGAGEMENT MODEL

Community Engagement Four Stages and Steps:

Stage 1: Community Awareness and Engagement

- Making the problem visible
- Sharing the data
- Telling the story
- Enrolling community leaders
- Building local allies

Stage 2: Community Leadership

- Expanding leadership at the community level
- Communities claiming responsibility for solutions
- Community investment in efforts to address the issue
- Community-based decision-making re: strategies
- Community structures (advisory committees, steering committees) through which work is accomplished
- Engaging stakeholders who have been the biggest critics of the system as solution-builders & advocates

Stage 3: Community Organization

- Going to the community, being guided by it to learn what strengths exist, what the needs are, and bringing community members / families and youth / natural community leaders into the process
- Selection of practices that are needed from the community's perspective
- Giving community members the chance for meaningful contributions
- Operating from the premise that the community knows best
- Recognition that communities are resilient
- Grounding the work in these principles:
  - Analyzing power
  - Defining racism
  - Understanding the manifestations of racism
  - Learning from history
  - Cultural sharing
  - Organizing to undo racism

Stage 4: Community Accountability

- Defining and achieving desired outcomes and measurable results
- Everyone is a contributor to what the results should be
- Sustainability is the ultimate goal
- Communities and systems are the owners of the solutions
- Community leaders do not stay silent — they advocate
- Community accountability transcends the work of CPS and other organizations communities must be accountable to people in the community for community wellness
- Communities hold all systems accountable for the oppression they have imposed on communities, their residents, their children
- Accountability must be visible supported through written MOUs and other formal strategies, having formal networks for services

Summary Points

- Highly inclusive process
- Reliant on a facilitative leadership process of committees and other entities
- Cross-systems approach with shared values, shared resources, mutual investment in identified outcomes
- Community leaders are engaged in decisions and the commitment of resources for sustainability
- Community strengths are a strong focus

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APPENDIX C:
A Groundwater Analysis of Racial Inequities

APPENDIX C: A GROUNDWATER ANALYSIS OF RACIAL INEQUITIES
"Turning the Mirror Inward"

Description

In the absence of a racial equity lens, well-meaning leaders often continue to unconsciously contribute to sustaining and often perpetuating racial inequities in the design and delivery of programs. This workshop will enhance the racial equity awareness of the participants by building a common language and understanding, of the underlying factors that contribute to racial inequities. This increased knowledge can be a catalyst for developing strategies to build more effective programs and for strengthening and transforming the culture of systems towards increased accountability in response to the needs of all populations.

The facilitators are skilled in creating a safe space for participants to discuss institutional and structural racism in the historical and current context, in a way that holds us accountable for "turning the mirror inward" to examine systemic rather than individual factors contributing to poor outcomes. This safe space creates an atmosphere for all to engage in out-of-the-box thinking that can continue to be supported through consultation with JJC, beyond the workshop.

JJC will introduce the Ground water Analysis for examining racial inequities derived from an evaluation of the Texas Model:

- Racial inequities look the same across systems
- Systems contribute significantly to racial inequities
- Racial inequities cannot be attributed to one "bad apple"
- Racial inequities are concentrated in poor communities and communities of color
- Systemic interventions and training can work to reduce disproportionality and disparities and improve overall outcomes for all populations

The workshop is designed to enhance the awareness of well-meaning and committed leaders to strengthen and transform systems and community-based organizations to better respond to the needs of all populations.

The workshop components serve as a basis for analyzing racial inequities that exist and intersect across systems such as housing, education, law enforcement, financial services, healthcare, juvenile justice, child protective services, and employment. The outcomes of services in these systems disproportionately impact poor communities and communities of color in ways that previously may not have been considered. The workshop is designed to promote a clearer understanding of the role of leadership in systems and institutions in working together and in partnership with constituents and community to understand the history of institutional and structural racism, to strengthen our collective capacity to reduce and ultimately eliminate racial inequities in outcomes and in systems responses, both of which are predictable by race, across systems and institutions.

Workshop Objectives

- Examine by race/ethnicity, the data for multiple systems, to broaden knowledge and understanding of the underlying causes of racial inequities in systems and institutions, and the deeper more systemic factors that contribute to poor outcomes for vulnerable populations.
- Increase understanding of the importance of cross systems collaborations and being in partnerships with poor communities and communities of color to examine old attitudes, assumptions, and stereotypes, that shape the lens through which children, families, and communities of color are viewed so that systems begin to work in deliberate and intentional ways to remove the barriers that contribute to racial inequities.
- Introduce new language, skills, and concepts to move toward the development and implementation of more effective interventions that can reduce racial inequities and improve outcomes for all populations served.
- Engage participants in activities and facilitate dialogue designed to help systems be more accountable for "turning the mirror inward," to examine systemic rather than individual factors of racism, contributing to poor outcomes for poor communities and communities of color.
- Understand how institutional structures and practices impact outcomes for vulnerable populations.
- Engage in a facilitated dialogue to begin to examine commonly held attitudes and assumptions that create

and sustain disproportionate and disparate outcomes for poor communities and communities of color.

- Examine data by race/ethnicity for multiple systems, to broaden knowledge and understanding of the history of institutions, and the deeper more systemic factors that contribute to poor outcome for vulnerable populations.
- Examine the relationships that exists among systems and their collective impact on poor communities and communities of color.
- Begin to develop a common understanding and language that opens the door for conversations that are critical and necessary for undoing racism.
- Discuss the importance of moving from cultural competency to racial equity and developing a common definition and language with which to begin the journey to eliminate institutional and structural racism.
- Begin to develop the language and the skills to move toward the creation and implementation of more effective interventions that will reduce racial inequities and improve outcomes for all populations served.

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APPENDIX D:
The Groundwater Analysis Workshop Technical Assistance Report

APPENDIX D: THE GROUNDWATER ANALYSIS WORKSHOP TECHNICAL ASSISTANCE REPORT
City of Austin Police Department

ACKNOWLEDGEMENT

Joyce James Consulting (JJC) would like to thank the City of Austin, Office of Equity (OOE) and Police Department (APD) that helped bring "Groundwater Analysis" training and technical assistance to APD.

The willingness of Chief Bryan Manly, his command team and other sworn and civilian staff to have open and meaningful conversations about institutional and structural racism was invaluable to the open and honest facilitated dialogue. The presence of the OOE was critical to ensuring that all phases were in alignment with the anti-racist principles embedded in that office. The voices of the community members who shared in the workshop, debrief, and strategy sessions were very powerful in shaping the recommendations included in this report. JJC feels confident that in having strong community voices at the table, a higher level of accountability exists for change within APD.

Overview

The City of Austin (City) Austin Police Department looks to transform the department's culture in ways wholly antithetical to its beginnings as a law enforcement organization. The early history of the APD (as described in the Austin History Center's Austin Police Department Guide, 2018) recounts its law enforcement beginnings in 1840 with the election of the City's first marshal. Like other marshals of the day, those in Austin held enormous power. These elected officials picked their own officers, played a part in criminal executions and were chiefly responsible for upholding city law and order including the rules or laws specifically "designed to constrain slaves' behavior." One of these laws being slave curfews. The curfews made it unlawful for slaves to be in public or gather at night; responding to the fears of whites of people of color united through their enslavement. In their role as enforcers of the law, marshals and their officers could lash a slave found out in public after curfew with up to 15 lashes.

In 1862, the structure of the APD began to change in ways that reflected different societal norms. City ordinance set up the police department and a chief of police. Then in 1871, the first African American police officers joined the APD police force. Today, the APD workforce, both sworn and civilian, is more diverse. However, internal and independent reporting point to deeply rooted and persistent signs of institutional and systemic racism—that have not and cannot be diminished simply by the passage of time.

Therefore, consistent with the department's vision for systemic changes within the department, the OOE and APD contracted with Joyce James Consulting (JJC) to provide technical assistance, "A Groundwater Analysis of Racial Inequities" (GWA) workshop and a workshop debrief and strategic planning session. The mission of JJC is to support organizations, institutions, systems and communities in developing a racial equity lens to recognize institutional and structural racism as the root cause of racial inequities in all systems and assist in creating organizational cultures that actively engage in sustainable strategies to eliminate racism.

Background

Three theories of action serve as a foundation for the JJC racial equity workshop and guide the use of pre- and post-surveys: transformative learning, critical race, and adult learning. Transformative learning is the "process of experiential learning, critical self-reflection, and rationale discourse that can be stimulated by people, events, or changes in contexts that challenge the learner's basic assumptions" (Brown, 2006). Critical race theory argues that "racism and other forms of oppression are central to the experience of people of color and dominant ideologies justify the status quo/structural oppression and must be challenged (DeMatthews, 2016)." The adult learning theory focuses on knowledge building in a way that fosters "critical reflection...essential for transformative learning" (Taylor, 2008).

Qualitative Feedback

The GWA workshop facilitated the examination of systemic transformation and participants' awareness about racial inequities and disproportionality in outcomes across multiple systems serving vulnerable populations and communities of color. In providing the APD with training and technical assistance, JJC used

its pre- and post-surveys to establish a baseline of participants' perceptions of knowledge of institutional racism and racial equity prior to the workshop and identify shifts in participants' perceptions of knowledge of institutional racism and racial equity immediately after workshop participation. Identifying shifts from an organizational standpoint can assist systems in determining where further training and guidance is needed related to addressing disparate and disproportionate systemic outcomes, point to an increase in the number of participants who have developed a common analysis of racism and the history that led to current outcomes, and aid in the analysis of workshop effectiveness.

A key learning from implementation of the Texas Model for addressing disproportionality and disparities in several systems serving vulnerable populations was that when staff at every organizational level understand and value history, culture and the partnership of vulnerable populations and community. Further, changes occur in decision-patterns and interventions that impact systemic outcomes.

Why Undo Institutional Racism

Participants were asked as part of workshop introductions, "why is it important to undo institutional and structural racism in the APD system?" The following responses were captured.

- It's hard to hear men and women talk about unfair promotion and transfers. They feel like they don't have the same opportunities.
- Maybe I had blinders on, but I didn't feel like I was working in a racist organization. Hearing comments over the last twelve months has been disheartening.
- All lives don't matter until Black Lives Matter.
- I want everyone in the Department to feel equal.
- Not to do so is robbing us of opportunities to be the best we can be in terms of talent and opportunity.
- So that people can feel valued regardless of their skin tone.
- We cannot provide service to the community in fair and equitable ways unless we look at ourselves first.
- It's wrong.
- The system needs to be fair and equitable for everyone. Austin is safe, but it's not safe for everyone.
- We've missed opportunities to make changes because people of color haven't been in a better position to have their voices heard.
- It's a matter of life or death for this city. For example, people in certain zip codes have a life expectancy that is ten years less than average.
- It has a diverse impact on society as a whole.
- Because nothing is more destructive of a person's spirit than when they've been singled out for something they can't change, whether skin color, gender, or sexual preference.
- Because the children are watching
- Everybody is not awake.
- If we can't take care of our own people properly internally, how are we going to take care of the people we serve?
- It's our own responsibility to carry out policies and procedures that are fair to everyone.
- I've seen people's self-esteem and careers ruined because of racism.
- As a profession, we haven't been good about teaching our history.
- We can't say we've done what we should have in terms of learning our history. Those who forget history are doomed to repeat it.
- We also have to challenge ourselves and ask: Through whose eyes do we examine history? We need to step outside of ourselves and look at the history of those whose stories have been untold.

Other Comments of Participants

- In addition to accountability, training is needed (education). There needs to be education for everyone because the individual's behavior affects the whole.
- We're not even having a proper conversation about the war on drugs.
- The academy videos continually show black males in violent incidents which shape the way we see Black men. New officers come in with the view that Black men are dangerous.
- Coming out of the academy, we didn't talk about race, but neighborhood. We were told, "when you go to those neighborhoods, take extra precaution." When you expect a bad outcome, what are you going to get?
- Zero tolerance for racism ought to be clear on the front end, but that wasn't clear in orientation from the City or APD. We need to not only make it clear that we don't tolerate discrimination, but we need to market it.

- Our policies and practices have protected certain people in the City. White people have had sub-standard job performance and it was tolerated for months, whereas Black people who have had similar shortcomings have been gone within days. The only difference was race. As gatekeepers, we need to "get in good trouble" when we see this happening. If we say we don't tolerate this and when it happens nothing is done, it's perpetuated.
- We need to have a consistent message at the front door about what will not be tolerated, and reiterate the message at multiple levels as well.
- We need to ask, "am I handling this in the least obtrusive means": both cadets and those who have been here for years.
- We focus so much on the bad apples and not the system.
- We'll become better as we approach this work from an institutional and structural perspectives.
- I hope that everyone in the Department goes through this program. The approach of other programs that we have attended makes people shut down and think that they're a bad person.
- This approach is new or unheard of to much of our workforce. They're not connecting dots with previous bias training. I hope that this training will be lasting.
- It's important that the enemy is not an individual, but a system. This fits with the motto, "safer together." It is an uncomfortable conversation that is necessary.
- If we leave a legacy, what legacy do we want to leave?
- I don't want to be a part of the problem by not moving forward.
- The content and approach used in this training are good.
- We keep trying, but we are not making progress. The way this is framed makes sense. We've been focused on the individual and we can't see the forest for the trees.
- We get so focused on process that we lose focus on vision.
- We see the same percentage of contraband among Whites and Blacks who are stopped, even though Whites are under-represented with respect to the percentage who are stopped.
- The system doesn't value the voices of people who are impacted by their services.
- There is a disconnect between what we say that believe and accountability. We had racial equity training in all of the years where the data show disparities. That means that those trainings were "one and done."
- We need to refocus on accountability in systems and away from individual accountability.
- In recruiting, we can make changes to the application on the "front end" "We do not tolerate... xyz. If you agree, you can proceed with the application."
- We've done lots of training but aren't seeing a different outcome. We definitely need to go to structural.
- The data tell us that something needs to be fixed, but it doesn't tell us what or how. We need to dig deeper.
- I hope we don't do things in a cycle. I hope we continue to have diverse representation.
- We have a distinction between sworn and civilian. While we have the right voices at the table, I hope we will allow outside voices.
- Relationships are the basis of the external culture. What we lack is an empathetic lens. We need to create a space to listen and learn, as well as to create a model for the entire nation.
- We have the same training year after year, and the outcomes of traffic stops don't get better. It is significant that the data are getting worse for African Americans while the percentage of African Americans in Austin is decreasing.
- How do we ensure that we're building things that will last ten years from now: that people who come after us will sustain what we do.
- From the perspective of data, heart, and mindset, the civilian side has all eyes on how ADP will respond.
- I think we should explore more from the social-emotional aspect and send not only a message of what we won't tolerate, but the culture that we do want.
- The significance of eyes from the past are important. I think we can't get enough of the history of Austin.
- How does the community see the department, and how can we bridge that gap?
- I feel that this group is going to do really awesome things and I'm glad to be a part of it.
- People have to be won back to engage both within and outside the organization. Some think that it's a hopeless task. Everyone has to pick up the oars and row the boat when some wonder if they even need to be in the boat.
- I think that this is a good way to move the system forward, but all pieces of the system are not here. Those who are not represented here are making decisions about our system, and that's frustrating.

- I'm excited. I'm ready to get out of the blocks and get moving. In addition to the data, which we know, we have to be able to think outside of the box and try some different things. As we're developing this plan, people are still being impacted within the department and in the community. Nobody has the perfect roadmap, so we have to take some risks. This needs to be something that all of our directors in the City need to hear. For example, someone in another division said that if a plan to address the homeless doesn't work, "we are going to unleash APD."
- If we can get to a point that any interaction can see our humanity, that will be a major step in addressing racism.
- Our efforts can't be departmentalized. It's not only something that only APD can work on. It needs to involve all departments of the City. Our eyes are opening that this discussion involves more than APD, and it can't be an adversarial approach. If we say that the only change involves APD, we're limiting our outcomes.
- Regarding power and purpose, there is a necessity to shift power. The history of this nation has been to "unleash" power on people of color. The pain point has been that power dynamic that people have been so frustrated about. Maybe we need to redefine our mission and purpose.
- In "re-imagining" public safety, what is the relationship with other organizations? That involves a deeper dive into a difficult conversation. How do we bring this into the "re-imagining" conversation.
- Anything that is working for Black people is destroyed, such as Black Wall Street in Tulsa, and Anderson High School in Austin.
- We used to arrest youth because of graffiti until the skateboarders started doing it. Then it became art, and we promoted it.

Participants' Surveys

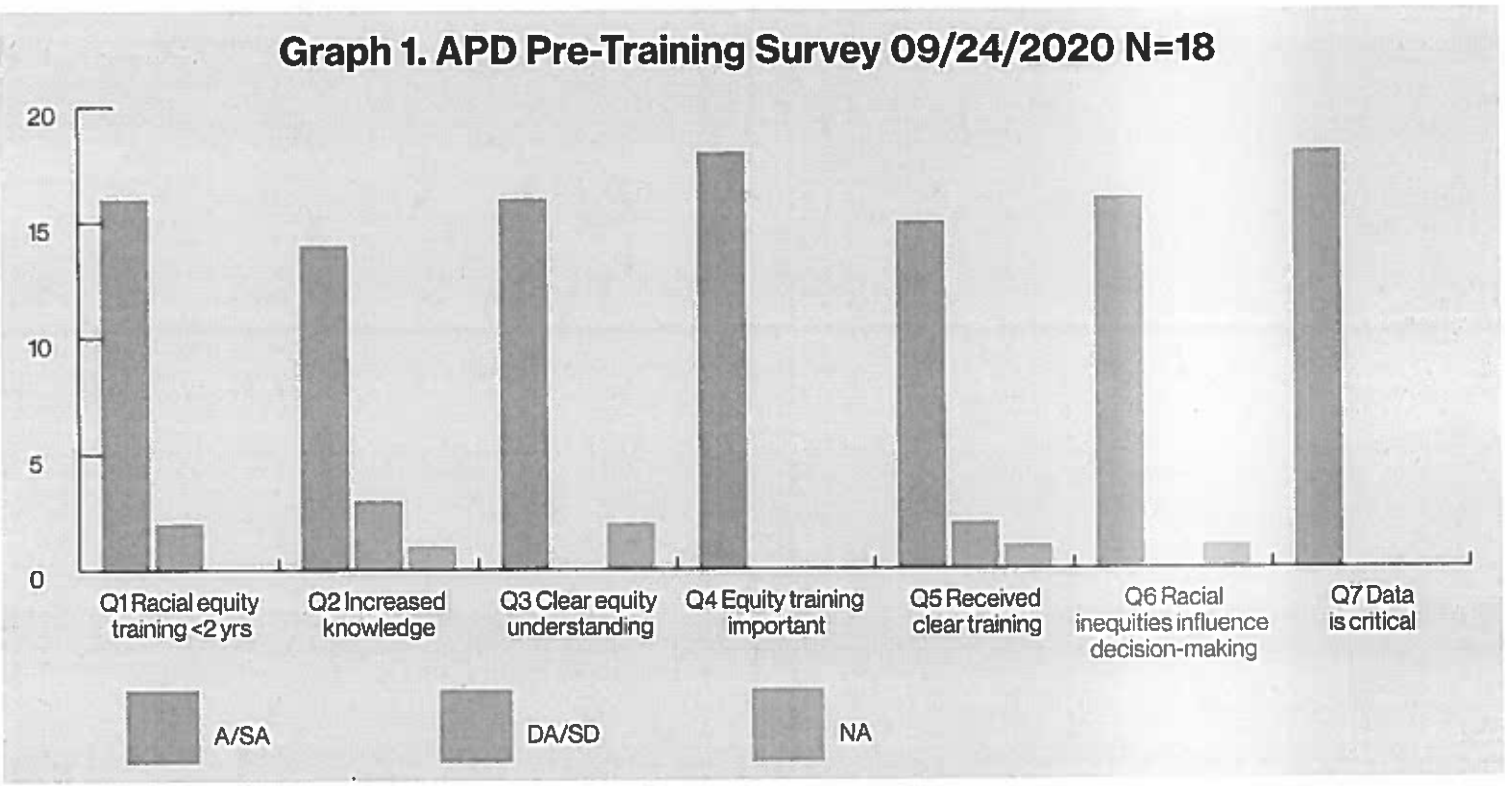
JJC examined the completed pre- and post-training surveys, feedback from participants on evaluation forms and during debrief and strategic planning. This report summarizes the results of the training surveys and evaluations and JJC's overall recommendations related to strategies that reduce or end racial inequities and disproportionality.

Pre-Surveys

JJC administered the workshop pre-survey immediately before training while the post-survey and evaluation took place immediately after. Participants' completion of surveys and assessment forms were anonymous and voluntary. Participants completing pre- and post-training surveys were asked to rank their agreement with the following seven equity statements using a Likert-type scale of "Strongly Agree," "Agree," "Disagree," "Strongly Disagree," and "N/A Unsure".

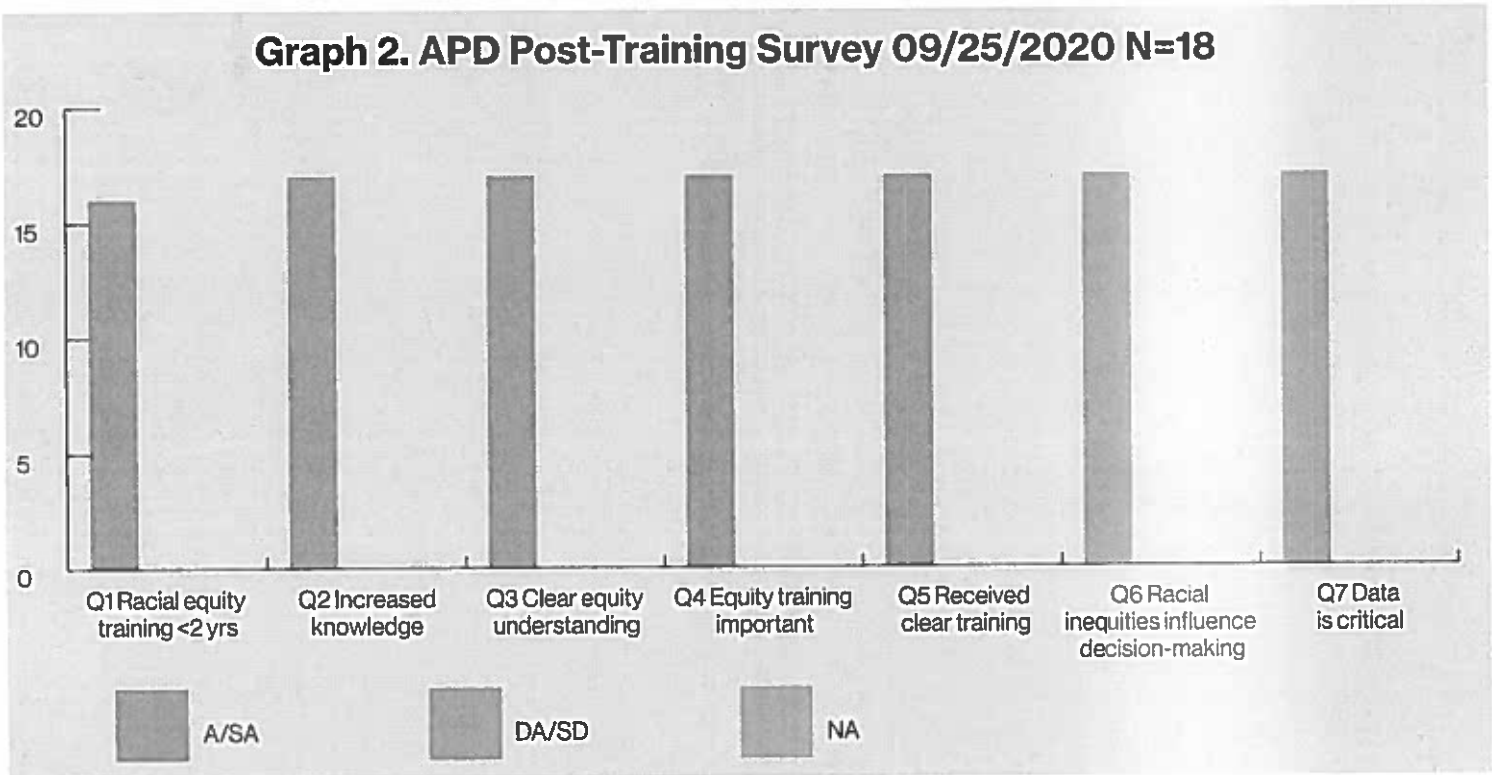
1. *I have received training within the past two years that has increased my knowledge and understanding of institutional and structural racism.*
2. *The training that I received contained information that increased my knowledge about the underlying causes of racial in equities in policing.*
3. *I have a clear understanding of what racial inequity and disproportionality means in helping systems.*
4. *I feel that it is important to train leadership and departmental teams to have an analysis and understanding of the history of institutional and structural racism in LE.*
5. *I have received clear training on the impact that institutional racism has on families and communities.*
6. *Institutional and Structural racism impacts the decision-making processes of individuals working within systems.*
7. *Data is critical in identifying racial disproportionality and disparities and in developing appropriate strategies that reduce racial in equities and improve outcomes for all populations.*

Most participants agreed or strongly agreed with all seven racial equity statements before training. At pre-survey, all participants agreed or strongly agreed that racial equity training is important (100%) and describe data as critical to identifying racial inequities (100%) (see Graph 1). Ninety-four (94) percent of participants agreed or strongly agreed institutional racism affect the decision-making within systems (see Graph 1). Eighty-nine (89) percent of participants said that it is important to train leadership and departmental teams about the difference between equality and equity (see Graph 1). Finally, seventy-eight (78) percent of participants said the institutional racism and racial equity training prior to the JJC training increased their knowledge.



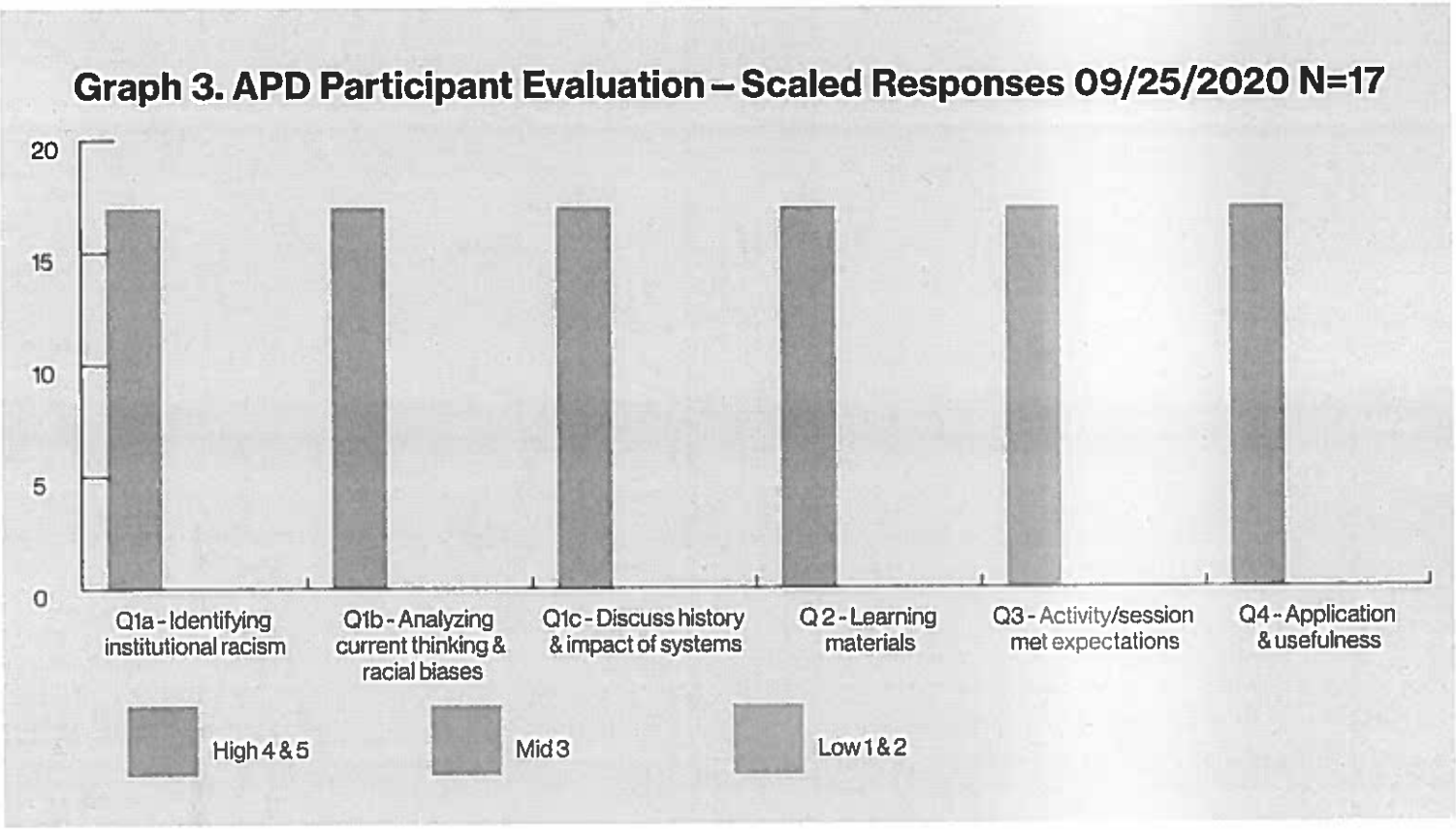
Post-Surveys

The post-survey asked again the seven equity questions for participants' after training. All participants agreed or strongly agreed with all seven equity statements (see Graph 2). (One participant joined by phone and did not complete the post-survey or evaluation.)



Participants' Evaluation

As part of the evaluation, participants ranked JJC's achievement of the workshop learning objectives and the application and usefulness of content on a Likert-type scale of one through five where "1" was the lowest and "5" was the highest (see Chart 3). All participants ranked all scaled responses at "4" or "5" (see Graph 3).



In addition to the scaled responses, participants provided qualitative feedback based on the following questions.

"What information or activities did you find most impactful?"

- discussion on equality and equity
- deep discussion on systems
- safe sharing environment; analogies
- equity vs. equality "Great" Enjoyed all!
- the statistical analysis of systemic racism
- the equality vs. equity exercise
- definition of structural an institutional racism
- all the examples & dialogue
- explaining the difference of systems-based vs individual based racism. Focus on systems, equality vs. equity graphic
- the background information of the instructors' parallel experience & impact on CPS systems to better outcomes for Blacks
- highlighting the differences between individual racism and systemic racism
- equity/equality exercise
- slide presentation/conversation/knowledge
- the chart equity & equality chart
- group discussion and experiences—understanding of systems
- The equality versus equity slide. The discussion and presentation were quite impactful.
- The equality vs. equity

"What aspects of the process will be most helpful to you in your daily life and/or work experience?"

- decision making
- developing strategies

COMPLAINT EXHIBIT B
148 of 152

- new understanding of equality v. equity
- ability to identify the barriers!
- understanding and dismantling systemic racism
- understanding the role of systems in outcomes and looking with a new lens
- having this conversation w/non-blacks
- the greater understanding now imprinted on me
- using a systems-based lens to examine issues and develop solutions
- identifying ways to remove fences
- Institutional/structure of racism
- all of it—but who was in the room receiving the training
- the equality vs equity

"How will this process provide an opportunity for you to be more effective in your work?"

- listening with a wider spectrum of knowledge
- developing analysis to think systemically
- understanding equity
- ability to change systems
- looking at the processes through the lens of outcomes
- the opportunity to use a new lens w/data to determine if we are affecting outcomes in a positive way
- helps me too create a safe inclusive environment to have a dialogue about this issue
- it gave me the awareness, tools, and hope I needed to move forward
- providing information I can use to create actionable items
- a framework to use when analyzing current systems & having conversations with coworkers about change outcomes
- creating a group to work together, having been through this training together
- better identify organizational impediments to equity
- the principle understanding we put to use in the department (APD)
- education and challenge to think outside the box
- understanding, enlightenment
- I will be able to clearly articulate how structural racism impacts the implementation of initiatives
- this process has helped me to look at the systems

"What new skill or idea will you implement into your job or practice...a result of attending this educational event?"

- decision making w/equity in mind
- systems thinking
- still a work in progress
- ensure all employees are exposed to this
- evaluating outcomes as systemic indicators
- providing this same lens and understanding to the workforce
- open conversations on race relations
- I will re-evaluate hiring processes specifically disqualifications that may be inequitable. I will add anti-racism in our mission vision.
- looking @ all policies & practices in my area of responsibility
- removing the fence!
- using a systems approach to problem solving
- implement the ideas of this session
- ensure the consideration of applicants based on their particular skills and circumstances
- addressing systemic change

Participants' Additional Comments

- great!
- truly outstanding & inspirational
- you all are awesome I want to be you
- best training not only on this subject but compared to other topics
- great training!

DEBRIEF

As a follow-up to the GWA workshop, JJC conducted a 3-hour debrief with participants. The purpose of the debrief was to share the data and information collected through participants' pre- and post-surveys and evaluation and consultants' observations drawn out from training discussions, provide participants with an opportunity to share their personal insights and awareness after reflection, gather additional feedback on individual training experiences such as how they may have connected with content and activities, and identify any new perspectives and learnings, which might translate to changes in day-to-day practices and strategic planning.

Why important to undo institutional and structural racism

- It's a birthright.
- Now we have a better definition and now I have a starting point. On both sides, there needs to be an understanding

of how we want our officers to come home every night.

- Colin Kaepernick was very peaceful, but he was told to stay in his place and was ostracized.
- After Olympic medalists Tommie Smith and John Carlos gave the Black Power salute while the Star-Spangled Banner was playing, their lives/careers were ruined because they didn't stay in their place. (They'd won gold and bronze medals respectively in the 200-meter sprint at the 1968 Summer Games in Mexico City.)
- Law enforcement is often used as the clean-up mechanism for other systems. Unless we address the problems in the whole system, we're still going to tell police to take care of it.
- For the longest time, I thought I knew what institutional racism meant, but I realize that I don't.
- If I go in thinking that there's going to be a bad outcome, there's going to be a bad outcome.
- Teaching cadets racial profiling
- Many cadets say that they grew up in neighborhoods where everyone looked like them, so most of what they learn about Black people is learned on the street.
- In medical school, they dissect bodies to learn more about how to find a cure. The same is true about the history of policing.
- How do we get people to step into the reality of what Black people experience every day? Black people get tired trying to convince White people that this is really happening. It feels like a loop repeating, and it's tiring.
- If we're not conscious of the jobs we do, we can do really bad things. For example, there were people in Nazi Germany who went to work every day and planned transportation of trains to the concentration camp; those in purchase who bought bullets and gas; those who were planners, and so forth.
- As the lightbulb comes on, people need to know about resources that are available. How do we get everyone at the table who needs to be there?

What we heard from participants about fences in the APD

- The system that is in place for promotion. Is it a fair system? What does a fair system look like? That brings in the contract and barriers associated with that.
- Challenges with specific required course work in forensics that vary by university and impact incoming qualifications.
- Many applicants have been disqualified because of low category offenses that can be reconsidered for civilians.
- Promotions, transfers, and disqualifies in recruiting system.
- Making sure everyone has an opportunity to succeed and advance. Inclusion across the board.
- FTO program needs to be re-examined where FTO tells new officers to forget what they've learned in the academy. Can ride-alongs be a part of cadet training in the future?
- Communication throughout the department from the time a recruit steps into the academy and some of the comments within and externally from the community reveal communication issues.
- TPOA has a document with a whole list of items. They are being written up more formally. This information will be shared and may impact Women, Hispanics, and Union as well. Don't want to leave out any group.
- Commitment from leadership that is communicated both internally and externally that we are going to make this change at every level.
- Commitment to leaning into the fences and acknowledging the fences.
- Fence around community trust. Figure out strategy to restore that trust. On the community side, there are people who don't want APD at the table, but they need to be at the table in order to re-imagine public safety.
- Resources. If all 50 or 100 managers throughout APD were involved in this discussion, we would have so much more input into what the fences are.
- In the recruiting process, we should consider allowing second chances for bad credit, eviction, and so forth.
- Assure that we don't rebuild the fence with protectionism in efforts to rebuild trust within the community. For example, it's true that police want officers to come home every night. How can everyone sit at the table and be respectful of the culture from the community's viewpoint? **JJC**: Maybe go to the group and ask, "what would it take to be invited back to the table?"
- How do you repair trust when some of the messaging is not community oriented? **JJC:** Through communication, the community needs to know what APD is doing. How do you message it in a way that says this is what the APD is doing?
- Some people who don't represent the community go through the back door and say that they do. There has to be reciprocal communication.

- We must use the history of policing as a point of departure.
- The community has power, but no authority. The power comes from the institution. How can we bridge that gap?
- How do we transfer authority to the community so that it is actually distributed there and change comes from a unified effort?
- Who is "the community"? Some parts of the community are not in sync with or in agreement with other parts of the community. JJC: How do we develop strategies to hear voices from all segments of the community?
- There are multiple communities. How do we talk to the little guy in the equity slide such as the formerly incarcerated, Black trans women, homeless, etc. because those are the most vulnerable and those most left out of the community. If we don't have an existing relationship, we need to create one.
- Division between sworn and civilian is an extreme fence. Employee relations and recruitment have areas of similarity to identify and then synchronize. That's a huge piece of the puzzle. Employment processes for 911 and officers are the same in the beginning, and then break off at some point. If HR is not on the front end of employment meetings, there are challenges on the back end.
- Do a better job of marketing areas that have been neglected.

STRATEGIC PLANNING

Fundamental to the APD's future success in tackling the complex and persistent problems of racial disproportionality and disparities in its outcomes is a roadmap—strategic plan—designed to address institutional and structural racism. With the foundation of a deeper understanding about institutional and structural racism as the root cause of racial inequities; the goal of the APD strategic planning session (as facilitated by JJC) was to identify priorities and opportunities for measurable actions.

The strategic planning session opened with participants selecting by consensus the following immediate priorities.

1. Develop and deliver a consistent message about racial inequities and disproportionality about what will not be tolerated and a plan for reiterating the message at multiple levels within the organization and at APD's "front door."
2. For both the APD cadets and those who have been in the department for years, ensure policing is handled by the "least intrusive means."
3. Thoroughly analyze data to ensure focus on the most appropriate areas.
4. Engage members of the community who participated in this process with APD, in the ongoing planning and implementation of new strategies that will improve and strengthen partnerships with community.
5. Add anti-racism language to the APD core values and principles to strengthen the APD mission and vision statement in conveying the importunate of an anti-racist organizational culture.
6. Develop a process for engaging with "Ida Sector" officers, community members, TPOA, and others, to actively involve and hear the voices of the community in the design of a new and inclusive community policing model.
7. Examine budget allocations that may support the new community policing model, i.e., hand select officers, include Ida Sector community members in GWA workshops with assigned APD officer
8. Engage both sworn and civilian staff in the process of identifying and undoing institutional and structural racism.
9. Identify other cross systems partners, city of Austin departments, community-based organizations and individual community members to include in the ongoing efforts to develop an "upstream" collaborative approach to undoing institutional and structural racism in APD.
10. Prioritize and develop a plan to make GWA training available to the APD across department and at multiple levels.
11. Conduct a critical examination of the APD policies and procedures through a racial equity lens

RECOMMENDATIONS

The historical nature and design of law enforcement and all other systems, shows that systems as originally structured have an oppressive racially defined relationship with internal and external constituents. Therefore, ensuring an organizational culture and climate that is supportive of the APD vision requires that the department actively engage in creating a sustainable culture; one not solely focused on individual implicit biases, but rather,

placing a higher level of accountability for addressing racism at the institutional and structural levels. Systemic change will only occur when leadership can visibly demonstrate a willingness to be intentional, deliberate, transparent and vulnerable in recognizing the long history of racism in policing and in creating a liberated and safe space for internal and external stakeholders to share in every step of the process of creating the new APD anti-racist culture.

JJC has recommended in the full report that APD use key components of the nationally recognized Texas model to support and enhance efforts to create its more race competent organizational culture. Racial disproportionality and disparities are complex and multi-faceted. These components will act as a frame for the necessary work ahead.

REFERENCES

Austin History Center (2018). Austin Police Department Guide, Sources of Information Relating to the Austin Police Department. Austin Public Library

Brown, K. (2006). Leadership for social justice and equity: evaluating a transformative framework andragogy. *Educational Administration Quarterly*, 42(5), 700–745.

DeMatthews, D. (2016). Effective leadership is not enough: critical approaches to closing the racial discipline gap. *The Clearing House: a Journal of Educational Strategies, Issues and Ideas*, 89(1), 7–13. doi:10.1080/00098655.2015.1121120

Taylor, E. W. (2008). Transformative learning theory. *New Directions for Adult and Continuing Education*, Vol. 119, Wiley InterScience, doi: 10.1002/ace

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Case No. 1:22-cv-655

COMPLAINT
EXHIBIT C

Community Report

Austin City Council Resolution 66: Austin Police Department Training Video Review Panel

By: Jeaux Anderson, Angelica Erazo, Andrea Black, Maya Pilgrim, Miriam Conner, Phil Hopkins

January 18, 2021

"The truth is that the police reflect America in all of its will and fear, and whatever we might make of this country's criminal justice policy, it cannot be said that it was imposed by a repressive minority."
-- Ta-Nehisi Coates, Between the World and Me

"Today has shown police don't need de-escalation training. They choose who to escalate on. That's not a training issue."

-- @traceyecorder in reference to Jan. 6 riot at the US Capitol

LINK TO EXECUTIVE SUMMARY

I. **Introduction**

II. **Patterns Identified in Videos**

A. Pattern: Racial Bias, Stereotypes and Use Of Force
B. Pattern: Overrepresentation of "What Not To Do" Videos
C. Pattern: Ineffective Language and Neglected Power Dynamics
D. Pattern: "Us Versus Them" Mentality
E. Pattern: Dramatic Reinforcement of the "Danger Imperative"
F. Pattern: "A Few Bad Apples" Theory of Police Accountability
G. Pattern: Emphasis on Transactional Interactions
H. Pattern: Inappropriate Use of Mass Media News Clips

III. **Insights into the APD Training Academy Curriculum and Process**

A. Ineffective Adult Learning Strategies
B. Lack of Overall Coordination
C. Ethics Training Isolated
D. Concerns About Process

IV. **CONCLUSION**

I. INTRODUCTION

SCOPE OF THIS PANEL

We were invited as community member representatives to review a core set of Austin Police Department (APD) training videos shown at the police cadet academy as laid out in Austin City Council Resolution 20191205-066.[1] The videos we reviewed were chosen by leadership from the Austin Police Department and the Office of Police Oversight. We reviewed videos within the Arrest, Search and Seizure; Arrest and Control; Crisis Intervention; De-escalation, Tactical Communication; Use of Force; and Use of Force - Legal modules. Our task was to identify and analyze any racial and gender inequities in the videos and the ways in which the video training material may reinforce larger cultural stereotypes and narratives.

We are writing this report to share our experience and analysis at the end of a seven-month process. This report supplements the formal reports submitted by the panel facilitators at Life Anew. We would like to call attention to the external review produced by Peace Mill Research and Communications, "Community + APD Equity Assessment Series: Austin Police Department, Training, and Recruiting Divisions."[2]

CONTEXT

We are writing this report in the midst of turbulent times. We undertook this review as a community panel a year after the Austin City Council recognized in 2019, through Resolution 66, the Austin Police Department's (APD) "history of bigotry and discrimination that has contributed to racially disparate outcomes in policing and policy."[3] We came together in 2020 during a summer of uprisings in response to the police killings of Black people. We are currently experiencing a global pandemic that is overwhelming our underfunded public health system and has resulted in disproportionately high sickness and death for Black and Brown communities. This same year, a presidential executive order banning anti-racism training in federally funded programs was issued in an attempt to erase the history and the violence inflicted upon communities of color.[4]

We have undertaken this review and report with a sense of responsibility to the communities of which we are a part and a commitment to voice our analysis and experiences in regards to disproportionate targeting of, and violence toward,

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[1] https://www.austintexas.gov/edims/document.cfm?id=332753
[2] http://www.austintexas.gov/edims/pio/document.cfm?id=352525
[3] https://austintexas.gov/page/resolution-66
[4] https://www.whitehouse.gov/presidential-actions/executive-order-combating-race-sex-stereotyping/

communities of color at the hands of Austin's police force. We recognize that the patterns we witnessed while reviewing the APD training videos are not exclusive to APD but are reflective of our society at large. However, as we witnessed in video after video, the power and authority which APD wields can have lethal consequences. We continue to witness Black, Indigenous, and Brown deaths across the country at the hands of police. We know APD wants to and can do better. We submit this report in the hope that APD will:

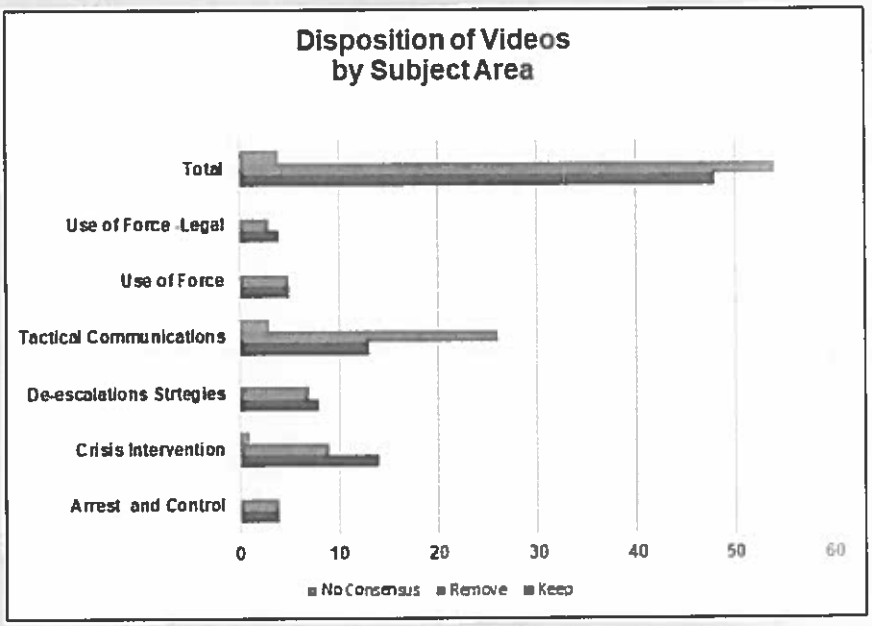
- Unify a siloed approach within the department that currently leads to disjointed training;
- Reevaluate, root out, and correct the ways in which the numerous biases we delineate below--specifically racism, classism, homophobia, ableism, and misogyny--currently permeate its training materials; and
- Interrupt the patterns and mechanisms of systemic violence in the larger culture which are perpetuated by the department charged to protect and serve.

We also recognize that the review of videos used in the cadet training is but a single gear in a larger departmental, city, and cultural machinery that perpetuates biases and behaviors that enact systemic harm and oppression on our communities.

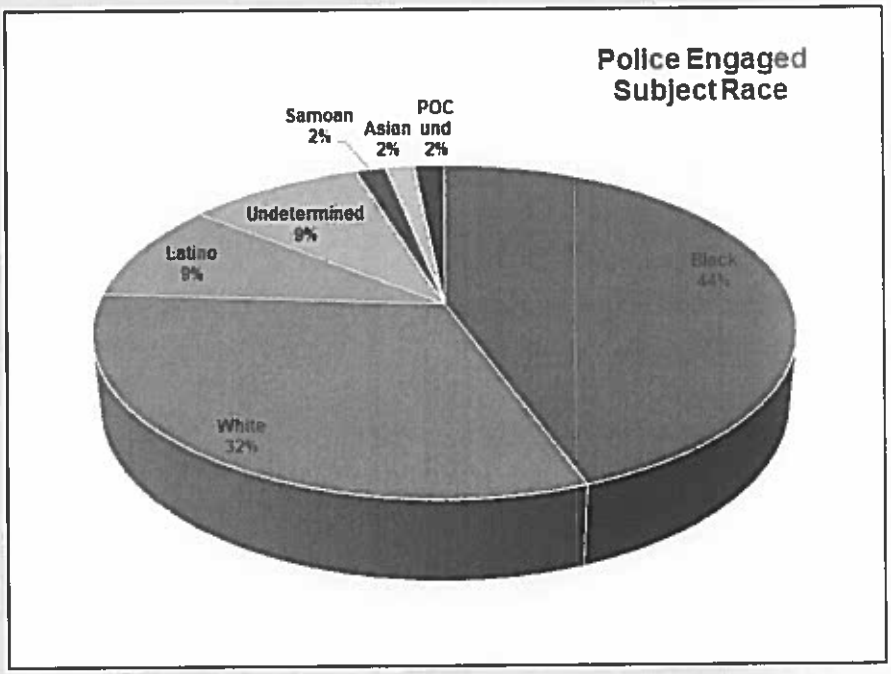
II. PATTERNS IDENTIFIED IN VIDEOS

Pattern: Racial Bias, Stereotypes and Use of Force

The vast majority of the videos we reviewed over these seven months were disappointing in quality. Most were outdated, many were hard to follow and had poor viewability, and some had unprofessional or sensationalistic commentary. Please reference Graphic A below. **But, *by far the most alarming pattern we witnessed was the harmful stereotypes perpetuated against Black and Brown communities***. The videos shed light on the disproportionate interactions police have with Black, Indigenous, and Brown communities that result in violence and death. The videos we reviewed were mirrors of the patterns of racism, sexist gender norms, and classism we see perpetuated across systems and institutions in Austin and nationwide, including the fact that the outcome of many of these videos was almost immediate and completely avoidable death. Graphic B below highlights the race of the subjects that engaged with police from the videos reviewed. Graphic C depict the subject's race that involved the subject being shot. In both graphics we can see people of color, particularly, Blacks, being overrepresented in the videos highlighted in the curriculum.



Graphic A - *(Graphic highlights the disposition of videos by subject area and the review panel's suggestion on either keeping the videos, removing them or where no consensus was reached. Over 50% of the videos were recommended to be removed from the curriculum.)*



Graphic B - *(Graphic displays the subject's race from the videos. Blacks comprised the largest percentage of subjects at 44% and whites as the next highest percentage of 32%. "POC und" is a subject of color of undetermined race. Out of the videos filtered, 59% involved subjects defined as people of color). Austin's city demographic listed the city's population as: 48.3% White (non-Hispanic), 33.9% Hispanic, 7.8% Black, 7.6% Asian, 0.7% American Indian or Alaskan Native, 0.1% Native Hawaiin or Pacific Islander.*

Issues of Racism, Implicit Bias, Not Integrated Throughout

We did not observe any discussion about the historical context of policing and the impact of White supremacy, racism and other intersectional forms of oppression, or implicit bias. While this may be covered in a separate training module, we believe it is critical that discussion of these issues be integrated throughout the training and that cadets be supported and encouraged to discuss the racialized, gendered and classist dynamics at play in every day interactions with the community. **These issues should be addressed at both the individual officer level as well as at the departmental level. Instead, the training appears to be focused solely at an individual level, focusing on an individual officer's "professional" vs "personal" demeanor and looking solely at their individual interactions.** There is no discussion about how they can and should intervene when issues of bias or racism or other misconduct arise or to examine how a department can and should build trust in the community and how it can respond to harm it creates in the community and work to repair harm and rebuild trust. It should not be about "hiding" or ignoring bias but about confronting it in effective ways. This is a critical area that requires in-depth training integrated throughout the training modules.

Dehumanizing Footage

Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed. We saw this play out in the way that many peoples' faces were not blurred--even when footage showed them in extreme crisis, nudity, and in vulnerable positions. In several videos, people's names were shared or people were depicted via police "mug shots" although not relevant to the training objective.

Many of the videos showed People of Color, and in particular, Black people, being brutalized and/or their well-being utterly disregarded. ***Because these are real human beings, not actors, in particular moments of time in their life, it is important to not perpetuate insensitivities to people's privacy and show care and ethics around how people's stories are used as training tools.***

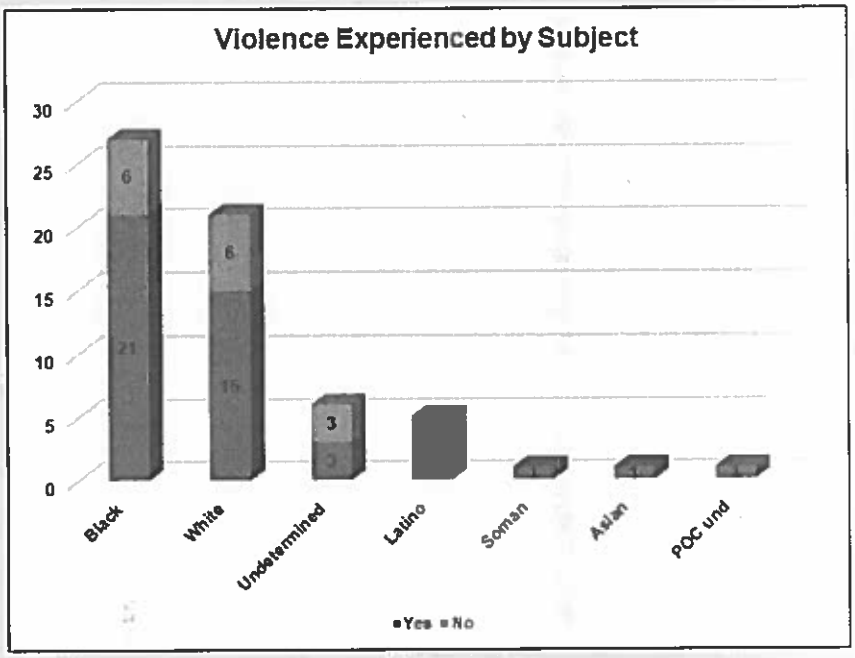
Rapid Escalation and Use of Force with People of Color

There was gross overrepresentation of the use of force and negative outcomes from mostly White male officers interacting with Black and Brown community members. We witnessed again and again mostly Black men dying within minutes, sometimes within seconds, of an interaction with police. There were exceptionally few videos showing the police trying to de-escalate situations involving People of Color. In many of the videos showing encounters with community members over minor criminal infractions, a strong emphasis on gaining compliance and control quickly

led to rapid escalation with often violent and even deadly results. We did not find any consistent focus in the training material on the fact that not all situations need to be controlled to the same extent and in the same ways. Please refer to Graphic C which is a representation of the number of subjects that experienced violence.

Many of the videos, including several that are more broadly used in police academies nationwide, are so disturbing in gratuitous violence against Black and Brown people that we strongly recommend that they only be used as examples of why community members historically mistrust the police. We do not believe these videos should be shown if APD trainers or guest facilitators are not able to offer a critical analysis and discussion of both what went wrong in the videos and how the results shown in them are shaped by deep cultural biases and stereotypes. We fear that repeated exposure to needless violence normalizes such interactions with the public for the cadets and desensitizes them to their own and their communities' humanity.

It is important to state that it was very traumatic for community members to watch repeated racialized violence displayed in the videos. We have grave concerns about the impact watching these videos will have on all cadets, and particularly cadets of color.

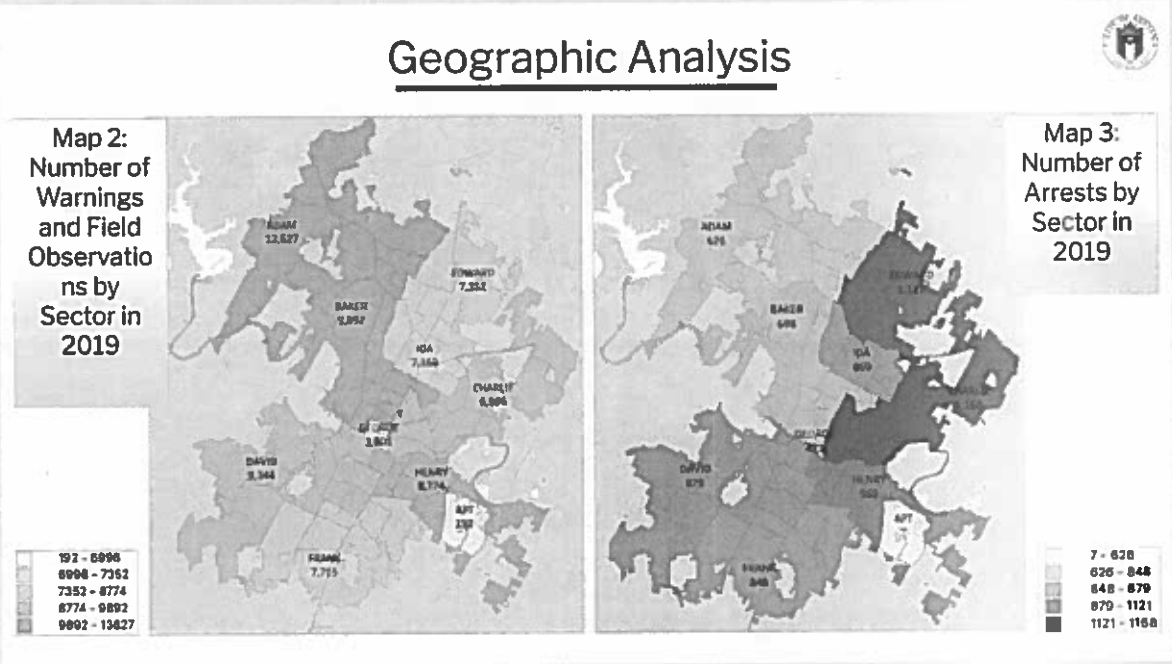


Graphic C - *(This graph is a representation of the number of subjects that experienced violence. Violence is described as tased, shot, shot at, killed, excessive force, shot with a bean bag, and pepper sprayed. As a percentage of the total number of subjects that experienced violence, Blacks represent 46%, Whites represent 30%, Latino 11%m Asian, POC und and Samoan represent 2% each, respectively. All people of color collectively represent 63% of all subjects that experienced violence.)*

Working Class and People of Color Seen as Threats

There was a clear pattern, both explicit and implicit, of different communities being offered different degrees of understanding and grace by officers. Police interactions with upper-class, White communities were noticeably absent in the videos. White people were often given considerable grace and understanding even when they demonstrated dangerous behavior, while People of Color, in particular Black men, were given little to no grace or understanding even for minor and less threatening actions. For example, one video of an armed White man showed an officer speaking calmly and reiterating the person's right to carry a firearm. In contrast, in videos where People of Color were armed or even unarmed, police officers treated them as threats and moved towards use of force with great speed. ***Such patterns echoed and reinforced popular narratives about, and attitudes toward, communities of color as more "dangerous" in clear distinction to White people.*** In the training material, class markers also clearly assigned "dangerousness" to less affluent socio-economic groups.

We know that this pattern is not only reflected in the curriculum, but also in current Austin policing. Graphic D below, taken from a recent analysis of racial disparity in policing in Austin by the City of Austin's Equity Office, Office of Police Oversight, and Office of Innovation, shows the tangible result of this kind of biased training combined with deep historical inequities in policing. The map on the left shows that warnings and field observations were disproportionately represented in 2019 police interactions in the predominately White and affluent areas of West and North West Austin. In contrast, 2019 arrests were concentrated in East Austin (Central, North, and South) and areas of South Austin--areas with the highest concentration of Black and Brown residents. This data clearly shows the implications of unequal policing, specifically with officers giving more grace, in the form of warnings, in more affluent and Whiter communities; and giving less grace, in the form of over-policing and arrests, in working class and Black and Brown communities.



Graphic D - *(Graphic from the 2019 Analsys of APD Racial Profiling Data by the Office of Police Oversight, Equity Office, and Office of Innovation.)*

Gendered Stereotypes

Patterns of gender stereotypes across different modules displayed frequent and unacknowledged gender biases. Female officers were rare, and when one was present, we witnessed her judgments and strategies disregarded by her male peers. Descriptions of effective officer presence and posture were often described in masculine ways, such as an emphasis on perceivable upper-body strength. Women were most visible in the Crisis Intervention section--both as officers and community members--reinforcing the "feminized" stereotypes of care and stereotypes that view women as "victims" of "hysteria." While women, both as community members and officers, were absent in most of the Arrest and Control and De-Escalation videos, we did see disturbing moments of violence and "what not to do" examples from White male officers toward Black women civilians. When Black women were featured, the impetus to control their bodies and dominate the interaction was clear, with officers justifying force due to "angry" and "sassy" stereotypes.

A lot of the videos perpetuated toxic masculinity and continued to show a disregard for nuance in what it means to be masculine and in what it means to be a police officer. In their interactions with community members, we repeatedly watched officers cling to ideas of control that perpetuates the need to be an aggressive, alpha male and having to assert dominance. We saw little to no room offered for police officers to turn aside from a "need" to be dominant in order to better connect to, and work with, the community on a human level.

Who Is Allowed To Be In Crisis

Some of the videos, many in the Crisis Intervention section, gave cadets an opportunity to hear personal storytelling and build empathy for people's problems and difficulties. However, this storytelling came almost exclusively from White men. This leaves a gap in knowledge of how mental health issues may show up differently for women and gender-non-conforming community members. ***Instead, women and men of color were rarely allowed to speak for themselves and were portrayed almost exclusively in footage that cast them in uncritical narratives about their needs from the point of view of those who assumed the authority to speak for them.***

This difference in whose perspectives are valued and highlighted in the videos correlates to the stark differences in police responses that we witnessed. It was a very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats. In one example, we watched a police officer give a White-presenting man seven minutes of grace and conversation despite his suspicious behavior, while in several other videos a Black man was shot within seconds of being approached by an officer. The pattern we witnessed was that White community members in crisis are allowed to be in crisis; whereas Black community members, whether in crisis or not, are perceived with suspicion as threats.

Throughout this process, the training curriculum lacked substantive content on how to effectively interact with people with disabilities. There was little to no information provided about the ways in which crisis can present differently for individuals across the spectrum of neurodiversity and ability. There were some videos in the Crisis Intervention section that highlighted information on different abilities and mental health issues, but no clear advice was offered on how to best accommodate a range of abilities or what to look for when approaching a crisis situation. Without this training, officers may not have the tools to recognize the various ways that ability and mental health impact an individual's responses. In some cases, behaviors that may be perceived as "aggressive" by officers may in fact be indicative of mental health crises or disability.

Outside of the Crisis Intervention training section, there was no mention of how to adequately serve and protect community members with disabilities. There were a few videos that appeared to show people experiencing mental health crises; however no explicit mention was made of the role mental health played in the interaction, and many such instances resulted in excessive use of force by an officer. A 2018 audit of APD Response to Mental Health- Related Incidents highlights the lack of implementation of peer-city best practices in APD crisis intervention training. This panel similarly identified these patterns and need for improvement.

Particular Crises Are Validated; Racialized Trauma Is Not

We also observed dramatic differences between the strategies taught during Crisis Intervention and the strategies taught in the other modules. The crisis intervention strategies encouraged officers to consider different factors that may influence a person's responses in a given situation. Trauma responses, developmental disabilities, and neuro-atypical behaviors were discussed and considered. Dementia, autism, and Alzheimer's were highlighted in particular. It was emphasized that people dealing with these issues deserve to be treated with dignity and respect. ***These strategies were nowhere to be seen in any of the other modules nor was their absence deemed relevant in processing the content of the other videos. Limiting these strategies to a particular module can have the effect of contradicting and devaluing those strategies and skills.***

We are concerned that such dignity and respect seemed largely restricted to people in recognizable mental health crises, but not other people in different forms of crisis, particularly those still largely unrecognized and produced by the allostatic load brought on by the stress and trauma of racialized poverty in our society. The emphasis on broadly supported mental health issues made stark the absence of recognition and support for these other serious and prevalent mental and emotional health issues throughout the videos.

This lack of recognition contributes to the patterns of violence which have resulted in police killings nationally of George Floyd, Breonna Taylor, and Elijah McClain in 2020 and the following deaths at the hands of the Austin Police Department from 2000-2020: Mike Ramos (2020), Mauris DeSilva (2019), Hugo Alvarez (2018), Aquantis Griffin (2018), Victor Sanchez Ancira (2018), Leslie Salazar (2018), Thomas Alvarez (2018), Landon Nobles (2017), Morgan Rankin (2017), David Joseph (2016), Larry Jackson, Jr. (2013), Ahmede Jabbar Bradley (2012), Maurice Paladino (2012), Byron Carter Jr. (2011), Devin Contreras (2010), Nathaniel Sanders Jr. (2009), Kevin Brown (2007), Daniel Rocha (2005), Michael Clark (2005), Jesse Lee Owens, Jr. (2003), Lennon Johnson (2003), Sophia King (2002), Jose Navarro (2001), Joel Hernandez (2001), Kevin Scott (2000), to name a few.[5]

RECOMMENDATIONS:

- There needs to be explicit acknowledgement of the embedded racism and cultural narratives in the videos. Issues of White supremacy, as well as race, gender, class, and other inequities in our community, should be explicitly

[5] "Use of Force Deaths in Austin, TX," National Association for the Advancement of Colored People (NAACP) – Austin branch, http://www.naacpaustin.com/use-of-force-deaths-in-atx.html. City of Austin 2018 Officer-Involved Shooting Report, Office of Police Oversight, June 2020.

discussed throughout the training modules, not just included in one or two sections.

- Find new training videos that offer a much more diverse representation of the demographics of both the Austin community and the APD force. Videos should portray multiple points of view and depict a diversity of community interactions, for example with women, the elderly, youth, LGBTQ, etc as well as different ages, races, ethnicities, abilities, individuals who are non neurotypical, etc. Special attention should be paid to the types of interaction portrayed so as not to overrepresent communities of color in violent interactions or overrepresent White community members in storytelling.
- Support APD trainers to build their capacity to analyze videos more fully and critically in terms of race, class, and gender equity. This capacity should be built in collaboration with community experts who are well versed and experienced in facilitating these conversations and integrating this type of analysis.
- Ensure that the privacy and dignity of all persons depicted in videos are upheld by blurring faces and nudity and deleting names.

Pattern: Overrepresentation of "What Not To Do" Videos

Over half of the videos that we reviewed displayed officers engaged in behaviors and practices they should NOT be doing, and a large proportion of those videos displayed officers using excessive force or making other grievous mistakes. We have termed these videos as "What NOT to Do" videos. These videos are very problematic. ***The continuous repetition of 'What NOT to Do' interactions actually reinforces negative behavior; can lead to officer desensitization about abuse, injustices, and corruption; and dehumanizes the community that the officers are sworn to protect.*** Only a very small percentage of videos we reviewed were examples of what officers SHOULD be doing, and even those contained content that was sometimes deemed problematic by the review board.

RECOMMENDATIONS:

- Integrate adult education methods that prioritize methodologies that support adult learning. Watching videos about "What NOT to do" is not the best approach. APD should emphasize videos that demonstrate and reinforce positive behaviors rather than videos that display and reinforce bad conduct.
- Prioritize a few "What NOT to do" videos that could be part of a deeper analysis and discussion in the classroom about the larger dynamics that tend to produce undesirable results.
- When we encouraged the trainers to identify positive, intentional 'what to do' videos, we were told that they would be hard to find. This serves as an argument for allowing time and resources for trainers to research material and to engage in creative strategizing to create, identify, or locate the types

of videos instructors need. The difficulty in finding such material quite likely also speaks to a broader nationwide dearth of appropriate, good quality police training videos and would suggest the need to review other police department training materials.

- Make de-escalation a much higher priority in the training and include more videos that demonstrate de-escalation without the use of a firearm.

Pattern: Ineffective Language and Neglected Power Dynamics

In all modules, but especially in the Tactical Communications section, we observed that the attempt to demonstrate professional verbal interaction often portrayed that communication unrealistically, with an emphasis on repeated stock phrases that have limited use in reality. Impersonal recurring phrases included: "cooperate so we can get you out of here quickly," "we want to get you home," "we're on your side," and "we want to hear your side of the story." Such examples not only come off as artificial and contrived but as essentially dishonest. The portrayal of them in the videos was stilted and reinforced that these ways of talking are not natural to the officers employing them.

We noted a stark contrast between the examples offered in the videos and the examples offered by the training officers themselves in our discussions. The instructors were able to demonstrate the sorts of communications they would offer in ways that were quite natural and believable. Our concern is that such examples as presented in the videos discourage rather than model the training of effective non-biased communication.

We also observed that the phrase "stop resisting," while frequently heard in videos, is not used in everyday language. In videos it was not clearly understood by community members with whom officers were interacting and tended to escalate the situation. More often it seemed to be used as a technique to justify use of force: in a number of videos we saw police officers shout it to people who were not resisting and were trying to comply with the officer's instructions. Police officers need to be trained in more effective, relatable language and strategies.

In particular, generalized instructions on compliance seem particularly ineffective with communities who are traumatized by the hyper-criminalization of their neighborhoods and whose families and communities have been disproportionately negatively impacted by the criminal legal system. This reinforces a dynamic of dominance which requires total submission in order to survive while more privileged communities are treated with respect and dignity. Even when officers in video footage communicated what appeared to be a genuine and sincere desire to help, they seemed unaware of their unmistakable position as representatives of state authority and how that authority creates a barrier, at least, to providing that help.

They did not portray an understanding of the unequal power dynamics inherent between police and members of the public.

Cadets need to be educated about these obstacles and provided with tools to navigate both the relative power dynamics between officers and the public and their own trauma and emotions. The phrase "I'm here to help" simply will not be heard the same way from a uniformed officer with a gun and the power of arrest as from a neighbor or a social worker. Given this power differential, any such offers of help may be perceived as orders. Furthermore, if a civilian is exhibiting fear or trauma responses because of the power differential, those responses may be perceived as suspicious or threatening by the police officer who may escalate the situation. Expectations formed from the other training videos that reinforce the perception of certain community members as more dangerous, as well as the lack of a fully effective Crisis Intervention Training, exacerbate this likelihood.

RECOMMENDATIONS:

- Trainers need to explicitly acknowledge race, class, and gender dynamics at work in the interactions with community members displayed in these videos. Trainers should not avoid these dynamics or focus, as they currently do, solely on an individualized framework; i.e. a police officer's "professional" versus "personal" face.
- Inculcate a culture of attention to social and emotional intelligence and develop successful coping strategies for officers throughout an officer's service through consistent policies and practices.
- Include explicit training in how to build rapport with the community and connect with community members in ways that are honest, transparent, and authentic rather than using detached, formal "police" language.

Pattern: "Us Versus Them" Mentality

One of the more pervasive biases we observed is the us-versus-them mindset. This bias existed at a fundamental, pervasive level, further informing other biases with respect to race, ethnicity, class, gender, and ability, and affected officers of color and female officers in the same or similar ways as White male officers.

The us-versus-them bias was explicit in some of the videos--i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:

- An enhanced focus on officer safety over the safety of the community as a whole,
- A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"

- An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and
- Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.

Primarily this bias manifested in a focus on police officers "winning" by overcoming resistance and threat from the community or by prevailing in court or in grievance and complaint hearings. ***It is counterproductive to frame interactions with the public as a contest in which the police should focus on "winning." This cannot help but set up the public in the position of "losing" in encounters with the police.*** The focus turns from compassion to conquest as officers see community as a roadblock in their effort to control and "win." In the end, communities will continue to suffer, as there is no viable way to "win"--not only against police officers, but also against the system that continues to protect police officers in this us-versus-them framework.

We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.[6]

We would like to call attention to Dr. Sara Villanueva's report referencing the paramilitary culture of both APD and particularly the training academy. We observed a paramilitary training style in some of the videos we reviewed. Dr. Villanueva states:

> *There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-oriented police service model. A growing body of research has shown that paramilitary-structured academies do not align well with the*

[6] In the past few decades, since 9/11, for a variety of reasons and by means of a number of local, state and federal programs, police departments, including APD have grown more militarized, not only or even primarily in terms of equipment, but also in terms of broad perspective. One of the most problematic dynamics of the national funding sources for the increased militarization of police departments is the way it skews accountability away from the local community and toward the broader state or federal sources of that funding. Cf. Also, https://www.pnas.org/content/115/37/9181 (actual report)
https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communities-study-finds (easier to read report)
https://www.aclu.org/issues/criminal-law-reform/reforming-police/war-comes-home?redirect=war-comes-home-excessive-militarization-american-policing

principles of community policing and problem solving which are based on collaborations and partnerships.[7]

RECOMMENDATIONS:

- The training and training videos should be more focused on serving and protecting the community instead of its current focus on the "warrior" mentality which views the community as the "enemy."

Pattern: Dramatic Reinforcement of the "Danger Imperative"

Connected to both increasing militarism and the us-versus-them dichotomy, which we believe is at the heart of the repeated instances of police overreactions to threat and use of excessive force, is what researchers have called the "danger imperative"--a belief in a constant and prevalent danger for police officers. APD is not unusual in this regard. A significant number of training videos in most police academies focus on interactions where officers' lives are under threat or in significant danger. Several of the descriptions of the training materials in use at the APD academy state this plainly. However, statistics from both the FBI Uniform Crime Reports (compiled by departments' self-reporting nationwide) and the US Bureau of Statistics show this emphasis to be disproportionate to the actual danger an officer is likely to face. Policing is among the top 20 most dangerous occupations, but it is near the bottom of that list, according to Department of Labor statistics.[8]

Violence against police has been dropping for the past five decades, while police violence against the public remains steady. Ambush killings of the police are down 90% since 1970 according to a longitudinal study in the *Police Quarterly*.[9] Police officers are several times more likely to die in an automobile accident, but still routinely refuse to wear seatbelts because they don't want to be hindered from exiting a vehicle should they be threatened with deadly force, a far less likely occurrence.[10]

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[7] Villanueva, Sara, *et. al.*, *Review Analysis and Strategic Plan* for the Austin Police Department Training Academy, May 2020 (p.10).

[8] https://www.bls.gov/iif/oshcfoil.htm#rates

[9] White, Michael D., "Ambush Killings of the Police, 1970-2018: A Longitudinal Examination of the 'War on Cops' Debate," *Police Quarterly*, 0(0) 1-21, Sage, 2020. Between 1980 and 2014, an average of 64 law enforcement officers were feloniously killed each year. There are over 600,000 police officers in over 18,000 agencies in the US. Construction workers and farm laborers have similar rates of on-the-job deaths. Steel workers, truck drivers, and farmers/ranchers die on the job at twice that rate. Trash collectors and roofers die three times as often. Airline pilots and fishery workers die four times as often. Loggers die seven times as often on the job. With the exception of truck drivers, none of those other dangerous occupations kill others frequently in the performance of their duties. Cf. also, "Disaggregating the Police Function, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3564469#:~:text=It%20proposes%20a%20totally%20novel,safety%20from%20the%20ground%20up

[10] Sierra-Arévalo, Michael, American Policing and the Danger Imperative (November 1, 2016). Available at SSRN: https://ssrn.com/abstract=2864104 or http://dx.doi.org/10.2139/ssrn.2864104

However, despite the statistical evidence, officers are trained to view every encounter as potentially life-threatening. While any given encounter with the public may indeed pose some degree of danger to an officer, the fact that across the United States 600,000[11] officers constantly ready to escalate situations out of fear for their safety poses a much greater threat to the public they serve. If officers are trained to view every person they encounter as a potential "cop-killer," then bodies already perceived by our larger society as inherently dangerous, such as young Black males, will inevitably bear the brunt of that fear. Further, the central dynamic of policing--to control the public in every encounter with them--will tend toward unnecessary escalation when that control is perceived as being resisted, something that occurs far more frequently when officers interact with People of Color.

One of the training officers acknowledged that there has been an overemphasis on an officer "going home at the end of the shift" for some time in policing and police training. The training we reviewed, particularly the training highlighting the danger imperative, definitely emphasized the safety for the officer above all else. ***We believe the emphasis should be on maintaining the safety of everyone in police interactions with the public. The goal should be for <u>everyone</u> to go home safely.***

RECOMMENDATIONS:

- The curriculum needs to address the impacts officers' choices have on individuals in the community. Cadets need to be continually reminded that their actions and choices may have profound and lasting impacts on individuals' lives.
- Introduce explicit and in-depth training in ways to mend relationships and rebuild trust with the community after bad actions by the police: from empowering individual officers to speak out after witnessing behavior ranging from merely inappropriate to criminal, to articulating the responsibilities, institutional expectations, and departmental practices in relation to the community when community standards are transgressed.

Pattern: "A Few Bad Apples" Theory of Police Accountability

We noted in our review the way in which examples of bad or even criminal behavior on the part of police officers in the videos was explained as being the result of individual bad actors. Repeatedly, the training officers expressed surprise over how officers in the videos acted, claiming they did not understand what those officers were thinking or why they were acting the way they acted. This is part of a nationwide trend to excuse this behavior as the product of a few "bad apples" rather than as the natural, even inevitable, consequences of larger biases and power

[11] https://www.statista.com/statistics/191694/number-of-law-enforcement-officers-in-the-us/

dynamics at work across police departments and society more broadly and of the structures and traditions of policing itself. The view that systemic problems are the result of individual police officers not properly following their training or lacking the appropriate attitude or temperament for policing prevents departments from properly addressing these prevalent and continuing patterns.

From what we observed in videos and with conversations with instructors, we contend that the structure of policing as a whole, particularly the focus on control and the warrior mentality, reinforces the us-versus-them dichotomy in ways that tend toward escalation and grievous mistakes in judgment. These patterns of police behavior are inseparable from the history of policing and how police practices have evolved to the present day. It is also tied to larger cultural narratives which engender perceptions of People of Color, women, gender-expansive individuals, the differently abled, and working class people as inherently less worthy of respect, or inherently suspicious, dangerous, and in need of "control."

A lack of awareness of these broader cultural biases that influence interactions with the public in ways unconnected to individual professionalism underscore the need for incorporating the proposed course on History of Police and Race in America course into the training academy curriculum. ***Without this foundation training that addresses racism and other forms of oppression and an awareness of and sensitivity to the intersectional identities that people live, the training will fall back on the popular narratives and frameworks that it already presents throughout the training modules***

If we continue to treat the problem as individual aberrant behavior and try to address it through individual disciplinary actions that clearly are not working even when they are (rarely) imposed, we will make little progress. The problems are systemic and must be addressed through cultural change and system-wide training that recognizes the role that police structure and history plays in producing them.

RECOMMENDATIONS:

- We wholly support the addition of the proposed course on History of Police and Race in America into the training academy curriculum.
- The proposed training in the history of policing should be a foundational module which precedes the skills-building training modules. We would recommend that additional coursework be incorporated that addresses implicit bias and cultural humility.
- In a hierarchical organization like APD, incoming, lower-ranked cadets are not effective levers of cultural change. In addition to revamping the cadet training academy, APD needs to undertake retraining of current officers to

respond to these critiques of the current training. It is not enough to revise the training solely for new staff.

- New cadets are being introduced to an established system with an entrenched ethos and worldview. The police department leadership would need to commit and follow through with cultural change through policies, practices, and expectations in order to change the academy. The department can't change through training alone.

Pattern: Emphasis on Transactional Interactions

Many videos emphasized a "transactional" approach to interacting with the community, rather than long-term relationship building to develop genuine, authentic relationships; i.e., "The Memphis model."[12] ***The main goal of many of the videos appeared to be teaching officers how to protect and safeguard themselves against complaints, reduce potential liability, and be prepared for court appearances rather than engaging with the community authentically, humanely, and ethically.*** This transactional approach was evident across modules, where cadets were encouraged to perform a show of humanity or behave in productive and community-oriented ways in order to gain compliance or avoid fallout from community complaints or legal action against them. The theme, explicit in several videos, was clearly that officers should treat people with respect for a specific and self-interested goal, rather than teaching that officers must treat people with respect because that is what they are due. It is deeply problematic to train cadets that acting appropriately with the public has a price tag in the form of some expectation of return.

RECOMMENDATIONS:

- What was apparent throughout the videos was wide-scale dehumanization and a lack of community accountability. We encourage APD to explore what community accountability should look like in direct consultation with the most directly impacted communities.
- Undertake a community review of the academy training, including a review of all videos every two years until APD has established trust with the community, after which the review process could be extended to every five years.

Pattern: Inappropriate Use of Mass Media News Clips

[12] The Memphis model was cited in one of the Crisis Interventionl training videos, but it was unclear whether APD has fully adopted and integrated this model. We believe it should be a priority orientation for all units, not just Crisis Intervention. The ethos of the Memphis model --"they treated me like a human not a perpetrator" -- should be for everyone.

A final pattern we noted concerns the source of the video clips. It appears that APD acquires some core sets of training materials from third-party sources, with individual training officers given the option to find any additional or alternative material. It does not appear that they are provided with a great deal of support or resources in their quest to find appropriate materials; it appears they often resort to reaching out individually to colleagues within APD or in other police departments to identify body cam footage that may be applicable to their teaching objectives. As a result, a number of the videos were gathered from very problematic video sources. In addition to Verbal Judo, T-COLE, PERF--many of which were outdated and were rife with stereotypes--we saw footage that was taken from questionable websites such as www.TheYnc.com and Thin Blue Line.

Many of the training videos used are sourced from mass media news clips and other online or social media outlets. There are several problems with using such material. First, mainstream journalists' primary priority is capturing and holding attention, often accomplished by stirring fear or otherwise sensationalizing interactions. Frequently, videos were overlaid with sensationalized music as well as explanatory commentary which was, at best, tangential to the training needs of the curriculum, and, at worst, actively working against the objectives of the training by skewing and dramatizing the material. Even if such narratives are challenged by the trainer, the cadets will still hear the commentary which speaks in the voice of the "public" tacitly or explicitly authorizing the police behavior. The commentary often borrows from and perpetuates popular narratives about both the world and certain "kinds" of people, offering a cartoonish breakdown of people as either "good guys" or "bad guys," usually simply on the basis of their roles or racial/class/socioeconomic status. The commentary exaggerates danger in ways that feed into narratives the public already accepts about what kinds of people are "dangerous." This reinforces unquestioned biases the cadets may bring with them into the training. It is not possible to tell a complex story about historical structures and dynamics in a two-minute news clip. Instead, news outlets recycle the same stereotypes and stories we already know and believe. ***The point of the training videos is to educate; using sensationalized news clips is counterproductive to that goal due to the "reality effect" that visual media imparts.***[13]

Some of the training material was even taken from Hollywood movies. ***No serious or real training value can be gleaned from Hollywood fantasies about the world.*** Training material should remain focused on the actual world. A particularly problematic example was drawn from *The Last Samurai*, exemplifying the cherry-picking of Eastern Cultures out of context (also present in several forms in

[13] Bourdieu, Pierre, *On Television* (New York: New Press, 1998), 21. Bourdieu argues "that images...show things and make people believe in what they show." Not seeing images has the effect of hiding them not only from our view, but from our consideration as a part of reality.

other training material, such as "Verbal Judo" and "Mushin"). ***Training material should avoid cultural appropriation.***

A number of the videos depicted outdated and stereotyping pop culture. The "humor" clips included cultural appropriation, and/or reinforced dated notions of policing, masculinity, gender norms, People of Color stereotypes, veneration of guns, etc. The comedy clips would likely appeal to particular audiences and would not necessarily resonate with a younger, more diverse cadet class. These videos need to be updated and made more inclusive, if used at all.

RECOMMENDATIONS:

- Overall, the APD videos need to be updated and refreshed. The training team should look for more interactive, engaging training videos with more dynamic storytelling. We recommend utilizing fewer, high quality videos for multiple modules which allows cadets to focus on different aspects of learning using the same scenario. While each module has distinct learning objectives, reemphasizing important skills like tactical communications, crisis intervention, and de-escalation strategies should happen continuously throughout the training so cadets can more fully integrate those skills into their approach to each situation that arises.
- The APD Training Academy should rely less on videos and instead facilitate more interactive roleplay as a more effective teaching tool.

III. INSIGHTS INTO THE APD TRAINING ACADEMY CURRICULUM AND PROCESS

In addition to watching the videos individually, the review process gave the panel a window into the overall training framework. We have the following observations about the training structure and the sequencing of the training modules, and also about our review process:

Ineffective Adult Pedagogy

While training officers are clearly interested in and working at developing better adult learning pedagogies, Dr. Sara Villanueva's report to the APD clearly articulated a series of steps to improve this effort for the academy.[14] We recommend that the APD Training Academy reach out to and utilize the expertise to be found at the University of Texas, Huston-Tillotson University, Southwestern University, St. Edward's University, and Austin Community College for help both in finding or

[14] Cf., Villanueva, Sara *Review Analysis and Strategic Plan* for the Austin Police Department Training Academy, May 2020

developing training materials and videos and facilitating training pedagogy and curricula including training the trainers.

Our review of the videos and concomitant interaction with APD trainers also made clear to us that the trainer is critically important. The trainer should be versed not only in the penal code but also in broader human interaction skills and psychology as well as the larger cultural issues so instrumental in shaping how police interact with the public.

RECOMMENDATIONS:

- The APD Training Academy curriculum should be extensively revamped, as outlined in Dr. Villanueva's report.
- Properly vetted subject matter experts outside of the department (including community members with lived experience and expertise in these areas) should be brought in as trainers to augment the APD training team and help train the trainers.
- The Austin City Council should create a paid community advisory board that serves as a resource to APD on an ongoing basis to develop trust and transparency with the community about its policing policies, training and practices, and facilitate the broader use of community resources.

Lack of Overall Coordination

There appears to be a lack of overall coordination, communication, and shared learning techniques among the trainers. Each training module appears to be very siloed. Trainers do not have a clear idea what is being taught in other sections and don't appear to regularly communicate with each other in order to reinforce and integrate previous learnings into the training content. As a result, the training modules are somewhat repetitive without building and expanding on each other. More worrisome, as mentioned above, is that training videos seem to contradict each other when a video shows what NOT to do from a previous module but then is left unaddressed in the current module.

The lack of coordination between trainers of different modules exacerbated this dynamic of overrepresentation of People of Color in disturbing situations and "What NOT to Do" videos by allowing for a perhaps unintended proliferation of these kinds of videos without a specific awareness of the pattern on the part of the academy as a whole. This kind of unintended result argues forcefully for better coordination of the curriculum and closer interaction among the trainers. Too frequently over the course of this process we repeatedly heard the phrase from the trainers: "I don't teach that section... I don't know what they do in that section."

RECOMMENDATIONS:

- The training would benefit from less siloing and better integration among the training modules and better communication among the trainers so that they are aware what each trainer is teaching and how best to sequence the videos.

Ethics and Crisis Intervention Training Isolated

According to the training officers, "ethics in policing," including when and how officers should intervene when a fellow officer is doing something wrong is addressed in a separate half day "ethics" unit. Treating "ethics" as well as the Crisis Intervention Training as isolated and tangential aspects of the training and police work is a problematic approach that fundamentally misunderstands the way ethics works in society and for individuals. In all of the many "what NOT to do" videos, NONE of them shows any fellow officer intervening.
In general, we observed an overall lack of discussion about whether a particular action or response was ethical.

RECOMMENDATIONS:

- Rethink the order of the training. **The order in training matters.** Tactical communications and Crisis Intervention should be shown early on and be better integrated, and later interactions in subsequent videos should be evaluated based on Tactical Communication and Crisis Intervention tools. Ethics training should permeate every section.

Concerns About Process

In the beginning, as participants engaged in the video review process, there was confusion over our role and how much control/influence that we would have over the process. Many of us assumed that we would be seen as consultants and would be able to let our coordinators know what we needed in order to do our jobs well. However, we quickly ran into problems with being denied information that we requested. The academy trainers emphasized several times that we were unable to grasp the full context because we were only seeing some of the videos or the training material, but we were then denied access to the other material that would have helped us gain a greater understanding of the training.

Additionally we encountered other barriers to full participation. We understand that for many anti-racist initiatives, information is collected in a report and put in a drawer never to be seen again. We watched videos with extremely traumatic content and subsequently engaged in detailed and explicit discussions; it was important for us to make sure it was worth it. We wanted to be clear about where

our analysis and feedback was going, how our recommendations would be implemented, and how the process would be transparent to the community.

During the beginning of the process, our group experienced two major obstacles:

1. Unrealistic timeline laid out by the City of Austin
2. Austin Police Association intimidation tactics

At the beginning of this process, our group was tasked with an impossible two-month timeline for reviewing all the videos. We knew we could not possibly provide the level of quality feedback we felt was warranted given this rushed process. The City of Austin has a reputation for appearing to rush community input in order to provide a stamp of "good faith" effort, engaging in little to no communication as to how these recommendations would be implemented to generate much needed change. After several discussion sessions, we agreed to extend the process and enlist a new vendor to assist with facilitation; namely, Life ANew. Our group facilitators from Life ANew were Sherynn Paxton and Randy Chivas. Thanks to them, the relationship between APD and the community review board dramatically improved.

It should be noted that during the process of raising our critiques and adjusting to new procedures, we also experienced an attack from the Austin Police Association (APA) regarding our process. This led to further distrust in an already sensitive relationship between the community review board and APD staff. Our group made a good faith effort to engage in this review process after watching several community organizations terminate their relationship with the APD. This attack from APA demonstrated the existence of a faction within policing that is opposed to the transformation we are attempting to facilitate and is intentionally spreading a very different message than APD and city leadership have communicated about the need for change.

It is a devastating commentary on the current police-community relations that community members felt endangered while involved in this review process. Several community members were actively threatened by APA representatives. APD and the Austin City Council need to hold APA accountable.

After finalizing our panel's work, we continue to have questions about the transparency and accountability of this review process as well as the broader review process outlined in Resolution 66. Some questions are:

- How will the results of this review be presented to the community?
- What is the timeframe and process for APD to review, respond to, and implement the recommendations made by this panel?

- How do APD and the City of Austin plan to hold themselves accountable and be transparent to the community?

While this process was challenging, we were able to engage APD instructors who answered our questions patiently and offered creative solutions to implement the changes we were suggesting. There were indications that some of the APD staff were listening to the concerns we raised and working to understand the perspectives offered. Several of the trainers were present for almost all of the sessions, and collaboration with them helped to achieve better results. We believe such officers demonstrate a growing desire to engender important and essential change within the academy and the police department as a whole and share our vision of better training for future cadets and a better police department for Austin and its diverse communities.

IV. CONCLUSION

While this process has given us valuable insight into the cadet training videos, the contributing factors that led to the formation of this panel review and to Resolution 66 are much bigger than video selection. The patterns and biases that we witnessed in videos were pervasive through each module because they are reflective of the patterns and biases we see everyday, everywhere. These patterns and biases are indicative of the systemic racism that corrodes the integrity of our institutions in Austin and across the country, *including* the police. They cannot simply be edited out of a video. They cannot be "trained" away if there are no changes in how the department is structured and how police work is done. Changing these patterns and biases cannot solely be the responsibility of the newest, lowest ranked officers who are entering a well-established, hierarchical culture that was founded on and continues to perpetuate systemic racism.

Accountability is a foundational requirement in all of our recommended changes. While we fervently hope that APD leadership agrees to make the changes we have outlined in the detailed list of recommendations, the culmination of a thorough seven-month review process, we know that nothing will fundamentally change unless APD also implements a detailed accountability framework, the specifics of which are necessarily outside the parameters of this report. **We recommend that APD collaborate with the City of Austin's Reimagining Public Safety Taskforce to develop further recommendations for an accountability framework.**

Undoing systemic racism requires systemic changes. It requires a cultural shift towards community respect, accountability and trust. It requires showing trustworthiness before a crisis occurs, not in a slapdash effort after the fact. It requires deep listening, authentic dialogue, and consultation with the communities most directly impacted by police violence. It requires the courage and skill to hold

difficult conversations throughout the department and confront world views that perpetuate these biases rather than take a colorblind approach. It requires a shift from "what can I legally do?" to "what does the community need me to do?"

This video review process is but a step in the right direction. Implementing the recommendations from this process is another step. The department will have to decide how far it is willing to walk to make systemic change happen.

In conclusion, we would like to thank the following people who joined us in this review process: Kellee Coleman, Rocio Villalobos, Sherwynn Patton, Randy Chavis, Dr. Sara Villanueva, Anni-Michelle Evans, Gary Carillo, Patricia Bourenane, Lt. Eve Stephens, Farah Muscadin, and Veronica Ferren.

Case No. 1:22-cv-655

COMPLAINT
EXHIBIT D

Kroll | A Division of DUFF&PHELPS

MEMORANDUM

TO: Farah Muscadin
Director, Office of Police Oversight

Nuria Rivera-Vandermyde
Deputy City Manager

FROM: Kroll Associates, Inc.

DATE: February 26, 2021

RE: Preliminary Assessment of Austin Police Training Academy

Introduction

On November 12, 2020, the City of Austin's Office of Police Oversight (OPO), in consultation with the City Manager's Office (CMO), retained Kroll Associates, Inc. (Kroll) to review and evaluate the Austin Police Department (APD) on the extent to which forms of racism, bigotry, and discrimination are present in the protocols, practices, and behaviors of the APD. The initial phase of Kroll's review is limited to an assessment of the APD Training Academy (Academy), including its ability and readiness to prepare cadets for policing in a multi-ethnic, diverse urban population consistent with best practices.[1]

We understand that the City of Austin (City), as expressed through City Council Resolution 66 and the work of the Reimagining Public Safety Task Force, and as articulated in the 2020 Strategic Plan of the APD Training Academy, seeks a transformational police academy that transparently addresses issues of racial and gender equity, emphasizes de-escalation tactics that minimize the use of force, and moves away from a regimented, paramilitary culture into a learning academy that "promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships."[2]

In assessing the Academy to date, we have examined a series of independent reports (listed below) concerning various aspects of the training academy pertaining to culture, teaching methods, racial and gender equity, and course content; interviewed APD and Academy leadership, instructors and other active and retired personnel, former APD cadets, community leaders and activists, outside consultants and academic experts, and City personnel in the CMO, OPO, and Equity Office (further details below); and begun researching best practices in police training academies. We have also requested, received, and started reviewing a large volume of documents from the APD, including: Academy curricula, course content and lesson plans, instructor CVs, organizational charts, policy manuals, procedures and protocols, statistical data, cadet manuals, class schedules, recruitment materials, employee rosters with race, gender and other demographic breakdowns, and other documentation and data.[3]

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[1] Kroll's retention is pursuant to contract MA 4400 PA210000018.

[2] Report of Dr. Sara Villanueva ("Review Analysis and Strategic Plan"), page 13 ("2020 Strategic Plan"), May 2020.

[3] The proposed curricula for DEI-related courses in the 144th cadet class are currently being developed by the Academy, pending the anticipated assistance of the new Organizational Training and Development Manager (ODTM), once onboarded.

In carrying out our mandate, we have specifically reviewed the following independent reports and assessments:

1. APD Training Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020)
2. APD Training Academy Curriculum Review by Dr. Miguel Ferguson (June 19, 2020)
3. Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications (December 14, 2020)
4. Racial Inequities and Institutional Racism, Joyce James Consulting (November 2020)
5. Community Report: Video Review Panel (January 18, 2021)
6. Community Video Review Panel (CVRP): APD Training Academy Videos, Final Report (January 14, 2021), and CVRP Summary Reports from July 2020 to November 16, 2020 (noting APD's concurrence with CVRP's recommendations).

We have also conducted over 45 interviews and meetings with a broad array of stakeholders (more than 70 individuals) over the past two months, including:

- Dr. Sara Villanueva ("APD Training Academy Review Analysis and Strategic Plan");
- Dr. Miguel Ferguson ("APD Training Academy Curriculum Review");
- City of Austin Equity Office staff ("Community + APD Equity Assessment Series");
- Community Video Review Panel ("Community Video Review Panel Report");
- Joyce James Consulting staff ("Racial Inequities and Institutional Racism");
- Austin community leaders (Just Liberty, NAACP, Austin Area Urban League, Austin Justice Coalition, and Texas Appleseed);
- Greater Austin Crime Commission;
- Civilian Police Review Commission;
- APD leadership (Chief Brian Manley and Chief of Staff Troy Gay);
- Academy leadership (Assistant Chief Brent Dupre, Commander Mark Spangler, and Commander Catherine Johnson);
- Academy supervisors – Training and Recruiting Units;
- Academy Instructors;
- Representatives of the Austin Police Association and its various affiliates (Austin Police Women's Association, Lesbian and Gay Peace Officers Association, and Texas Peace Officers Association);
- Former APD Training Academy cadets; and
- City of Austin officials and staff.

Additional interviews and meetings are ongoing.

Although our work remains in the developing stages, we offer this preliminary set of findings and recommendations at the request of the CMO given the sense of urgency facing City stakeholders in deciding whether and when to re-open the Academy for the 144th cadet class, which was originally scheduled to begin on March 29, 2021. The findings and recommendations in this memorandum are preliminary in nature and are based only on the information we have gathered and reviewed to date. As additional work and analysis remain to be done, the below findings and recommendations are subject to modification and revision as we gather and review additional information and as the Academy further updates and refines its preparations for the 144th cadet class.

Preliminary Findings

Based on our work to date, we highlight the following findings and observations that reflect on the readiness of the 144th cadet class in light of the City's stated objectives:

Diversity

- Academy leadership and supervisory staff currently reflects a significantly improved level of gender, racial, and ethnic diversity than in years past.
    - The ten APD personnel who make up the ranks of Academy supervisory staff in the Cadet Training Unit (Commander to Corporal) include three females (Commander, Lieutenant of Cadet Training, and Sergeant of Learned Skills); two African American males (Sergeant of Cadet Training and Corporal of Learned Skills); and one Latino male (Sergeant of Cadet Training). One of the females is also of Pacific Islander descent.
    - Similarly, the Recruiting Unit supervisory staff presently consists of five APD personnel from Commander to Sergeant, including two females (Commander and Sergeant of Recruiting) and two African American males (Lieutenant of Recruiting and Sergeant of Recruiting II).
    - The Recruiting Unit also includes significant racial, gender, and ethnic diversity at the officer and civilian ranks.
- Academy instructors on the whole are far less diverse. Although there is a sprinkling of female, African American, and Latino instructors, the officer ranks continue to be dominated by white males (although this appears to be slowly improving).
    - Leadership is well aware of the need to further increase racial, gender and ethnic diversity among the ranks of Academy instructors, and they are actively in the process of recruiting diverse officers to fill the ranks of current vacancies.
    - There seem to be a variety of reasons why the Academy has had difficulty increasing diversity among its pool of instructors, including financial disincentives (a loss of overtime and shift differential pay), physical fitness requirements, and a perception that instructor positions lack prestige or a pathway to promotion. Kroll notes, however, that other professional benefits counter these perceived disincentives, including better work schedules, additional training opportunities, access to Academy exercise facilities, and the satisfaction of teaching future officers.[4]
    - Although the Chief has authority to unilaterally order transfers to the Academy in an attempt to increase diversity, he has traditionally been reluctant to do so.
- The APD Recruiting Unit contains a diverse team of recruiters and background investigators and has developed a broad and effective outreach program that extends to other cities and states targeting historically black colleges and universities, Latinx organizations, military veterans, and women's organizations, among others. As a result, the list of 95 eligible candidates who are

[4] See APD Training Academy Curriculum Review, page 4 (discussing Instructor Surveys) (June 19, 2020).

currently expected to attend the 144th cadet class consists of one of the most diverse group of recruits in recent APD history, as reflected in the below chart (updated 12/10/2020):[5]

Gender	Asian/Islander	Black	Hispanic	Other	White	Grand Total	Percentages
Female	1	3	2	0	10	16	17%
Male	4	10	29	3	33	79	83%
Grand Total	5	13	31	3	43	95	
Percentages	**5%**	**14%**	**33%**	**3%**	**45%**		

- These future cadets are undoubtedly being recruited by other sources of employment. It would be a lost opportunity in addressing long-term diversity goals if this diverse cadet class were to become diluted.

- In addition, the 143rd cadet class, which graduated in October 2020, was 50% white, 33% Hispanic, 12% Black, and 2% Asian. This compares somewhat favorably to the 2019 census estimate, which shows Austin as 48% white, 34% Hispanic, 8% Black, and 7% Asian.

- There are recent indications that APD leadership is making an intentional effort to enhance knowledge and understanding of racial equity issues. Within the past year, APD leadership attended multiple anti-racism workshops in an effort to address and better understand issues of systemic and institutional racism within the department. For example, in February 2020, Academy leadership and cadet instructors attended *Beyond Diversity: Courageous Conversations About Race*, led by Dr. Glenn Singleton. In September 2020, 18 APD leaders attended a two-day "Groundwater Analysis of Racial Inequities" workshop led by Joyce James Consulting LLC. By all accounts, both seminars were well received, with some talk among APD leadership of possibly incorporating one of these workshops into cadet training or annual training for Academy instructors.

- The Academy appears to do a good job of training cadets on LGBTQ issues, with two hours each of course content devoted to policing and transgender issues taught by an openly transgender instructor, and an introduction to LGBTQ issues taught by Sergeant Michael Crumrine, the president of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement. The Academy also appears to do a good job recruiting in the LGBTQ community. The APD as a whole, however, needs improvement in training and educating officers on a department-wide basis.

- The Academy has developed a valued mentorship program for women cadets to help prepare and guide them through the Academy.

[5] Data and classifications provided by APD.

Paramilitary Culture

- The Training Academy remains a predominantly paramilitary training model, albeit with a greater emphasis than in years past on a classroom-based, learning-institute style of teaching.
    - Although most Academy leaders describe the Academy as a "hybrid" model closely associated with a paramilitary model but tampered with a mix of adult-learning courses, the reports of Dr. Villanueva and Dr. Ferguson, and interviews of Academy supervisors and instructors, suggest the paramilitary model continues to predominate.
    - Three frequently cited examples of the Academy's transition away from a paramilitary format include: First, the Academy has eliminated the requirement that cadets "make a hole" whenever an instructor or supervisor walks through the hallway (cadets were formerly required to stand at attention against the wall so that senior personnel could get through). Now, cadets are encouraged to extend a handshake, introduce themselves, and engage in conversation. Second, cadets are no longer required to wear camouflage, military-style attire as the uniform of the day in Academy. Third, there is less one-on-one, in your face stress actions (yelling and screaming), which are now more group focused.
    - Cadet surveys administered by Dr. Miguel Ferguson after the 141st and 142nd cadet classes suggested that most courses continue to be taught in a highly formalistic manner, with cadets yelled at, berated, and degraded by instructors in certain classes. Moreover, according to Academy instructors and supervisors with whom Kroll spoke, the Academy continues to impose behavioral modification exercises (i.e., group calisthenics and exercise drills at the sandpit) as collective discipline for cadet mistakes and compliance failures.
    - To date, it appears that the adult learning-style of teaching as discussed in Dr. Ferguson's and Dr. Villanueva's reports is not in widespread use and that efforts to update course content with adult learning strategies are on hold pending the hiring of Dr. Villanueva's replacement as Organizational Training and Development Manager (ODTM).
- APD leadership has expressed its belief to Kroll that a paramilitary structure is an essential component of police culture and paramount to ensuring cadets are attuned to the chain of command and know what to do and how to respond in crisis situations.
- The majority of APD and Academy leadership have questioned the assertion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a "warrior" mindset, which leads to an "us vs. them" mentality of officers on the front lines fighting crime.
- Although APD leadership dislikes the "warrior vs. guardian" nomenclature, the new Commander of the Academy said she believes APD should train its cadets to be "70% guardians and 30% warriors." "We are guardians, but we have to maintain a warrior mindset to stop immediate threats when they occur."
    - As an example, the Commander suggested to consider an officer assigned to protect school children. The officer is there as a guardian, but if a school shooting occurs, the officer needs to know how to become a warrior on the spot. That can only be learned at the Academy.

- The Academy has modified some past abusive practices, such as "Fight Day" and Stress Reaction Testing (SRT), in an attempt to reduce cadet injuries, lower the rate of attrition (which disproportionately impacted females and cadets of color), and create an environment more conducive to success and graduation.
    - Following the 141st cadet class, "Fight Day" was changed to "Will-to-Win" and is presently more structured and controlled than in years past, according to Academy leadership. The sparring instructors in the boxing ring are instructed to fight at 50% capacity (all cadets wear protective gear) and with no intent to injure cadets. The stated purpose of Will-to-Win is to ensure that cadets develop the mental fortitude and courage to keep fighting no matter what and to not give up, such as when encountering an acute situation while waiting for backup. The Will-to-Win exercise requires cadets to fight back and not quit for at least three minutes, the average time it typically takes for backup to arrive (the boxing component occurs after a series of other intense physical exercises designed to tire and stress cadets prior to entering the boxing ring).
        - Although the name has been changed, the essence of the exercise has not materially changed. It occurs prior to cadets being taught any self-defense or other hand-to-hand defensive tactics, which places them at a distinct, and arguably unrealistic disadvantage against skilled and experienced sparring instructors.
        - APD believes it is essential that cadets who have not experienced being physically assaulted or punched before arriving at the Academy should experience this for the first time in an Academy-controlled environment, and not in a hostile situation while on patrol after graduation.
        - Kroll notes, however, that APD personnel were unable to provide a persuasive rationale as to why such an exercise could not reasonably occur towards the end of Academy after cadets have received all essential defensive tactics training.[6]
    - Two white male instructors who were the most abusive during "Fight Day" (prior to the 142nd cadet class), especially to female cadets, have been removed from the Academy and replaced. The Learned Skills Unit now has a highly regarded (within APD) female sergeant and African American corporal in supervisory roles.
    - The Academy has eliminated SRT, a series of intense physical exercises that occurred on day one and pushed cadets to their physical and psychological limits to see how they acted under extreme stress. This frequently resulted in a number of cadets dropping out and appeared to operate as a sort of hazing ritual to force out cadets who "could not take it." Because Academy leadership determined that cadets were not being provided the tools to succeed and must be allowed to build physical capacity gradually, SRT was replaced with TBX – team building exercises.
        - According to the lesson plan, the goal of TBX is "to create a physically and mentally stressful environment through exercise and problem solving," which "will serve as an important introduction to the importance of teamwork and the need for strong

[6] In interviews with civilians who had accompanied APD officers on ride-alongs, it was noted that one officer commented that, if a physical conflict were to occur, he was going to "win" the encounter. Statements such as these give the impression of a "warrior" mindset among APD patrol officers.

leadership in law enforcement" consistent with the "philosophy, values, vision, and mission of the Austin Police Department."

- The Academy has also eliminated a steep hill climb that was used for SRT and disciplinary purposes and which caused a lot of ankle injuries. This has been replaced by TBX and modified discipline that requires cadets to carry a 15 or 20-pound sandbag to classes for a day if they fail an exercise, as well as collective discipline (behavioral modification exercises) in which all cadets perform extra physical fitness drills when any one cadet fails (this occurs in the first trimester of the Academy as a way of demonstrating that, when one officer messes up, it affects all officers).[7]

- The report of the Community Video Review Panel (CVRP), released on January 18, 2021, also highlighted concerns regarding the Academy's paramilitary culture as reflected in many of the Academy's training videos. A few of these concerns are highlighted in the below excerpts:

> *The us-versus-them bias was explicit in some of the videos—i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:*
>
> - *An enhanced focus on officer safety over the safety of the community as a whole,*
> - *A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"*
> - *An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and*
> - *Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.*
>
> . . . .
>
> *We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.*[8]

[7] These collective discipline sessions are sometimes referred to as "smoke sessions."

[8] "Community Report: Austin City Council Resolution 66: Austin Police Department Training Video Review Panel" (January 18, 2021).

Curriculum Review / Incorporating Adult Learning Theories

- Dr. Miguel Ferguson's preliminary curriculum review report of June 2020 urged the Academy to develop and design curriculum that adopts more of an adult learning or active learning model of teaching and move away from the rigid, formalistic, lecture-and-listen format that dominates many Academy classroom courses.[9]
    - Dr. Ferguson is awaiting guidance from Dr. Sara Villanueva or her replacement as ODTM before completing the final report, which he says will contain a comprehensive set of resources for instructors.
    - APD and Academy leadership have had little, if any, follow-up with Dr. Ferguson (with the exception of his co-leading a teaching symposium in December) concerning how to better incorporate adult learning theories and creative teaching methods into course content for the upcoming 144th cadet class.
- The report completed by Dr. Villanueva in May 2020 affirmed the need for the Academy to better develop and incorporate adult learning theories into its curriculum and teaching methods.
- The Academy is in the process of revising Cadet Training Instructor job descriptions (as recommended by Dr. Villanueva) to include appropriate expectations, duties, and responsibilities around teaching effectiveness.
- Although Academy instructors are actively in the process of revising course content and lesson plans in preparation for the 144th cadet class, Kroll has been informed that the focus is on ensuring that all course content is compliant with state-mandated TCOLE and BPOC requirements.
    - The sergeant and lieutenant in charge of Cadet Training are actively reviewing all course content for DEI-related courses; however, their reviews are likewise limited to ensuring that TCOLE and BPOC mandates are met, and do not pertain to whether lesson plans and curriculum content incorporate adult learning and other effective teaching strategies.
- The schedule for the 144th cadet class includes large blocks of time devoted to such courses as Penal Code (40 hours in Week 3), Arrest Search and Seizure (40 hours in Week 5), and Traffic Code/Crash Investigation (40 hours in Week 7), which requires instructors (often the same instructor) to teach non-stop for much of that time, and requires cadets to absorb a huge amount of information in a condensed period of time.
- When asked if the Academy is proactively revising the existing curriculum and lesson plans to incorporate more adult learning (active learning) strategies recommended by Dr. Villanueva and Dr. Ferguson, the answer provided is that Academy instructors and supervisors are awaiting further guidance and input from the new ODTM, whenever that person is hired to replace Dr. Villanueva.
- Nevertheless, a majority of Academy instructors and supervisors attended two teaching seminars within the past few months that addressed how to more effectively present course content and teach in ways that enhance learning. In particular, Academy instructors and supervisors recently attended:

[9] Dr. Ferguson's report specifically focused on course content for the following courses: Cultural Diversity, History of Policing, Professionalism and Ethics, Fair and Impartial Policing, Services for the Deaf and Hearing Impaired, Multiculturalism and Human Relations, Spanish, Transgender, LGBTQ, and Racial Profiling.

- A teaching symposium in December (co-led by Drs. Ferguson, Villanueva, and Sloan) that provided additional guidance on adult learning methods as applied to courses related to diversity, equity, and inclusion;[10] and
- A Transformational Training seminar led by a team of instructors at Command Presence (https://commandpresence.net/), a police instructional training firm. The 8-hour seminar provided ideas and methods for evidence-based teaching methods designed to counteract "death by Power Point" and other uninspiring teaching techniques. This was well-received by Academy staff, and the Academy plans to require this training annually for all Instructors.
- Academy instructors with whom Kroll spoke noted that many Academy courses already include a lot of scenario-based and role play content that is effective at teaching cadets how to apply what they are learning.

- Although APD and Academy leadership have expressed a willingness to work with outside civilian content experts from local colleges and universities in appropriate courses (such as the History of Policing and Race in Austin), it is unclear how much work is being done at present to bring in outside content experts and other community voices. For the most part, Kroll has found APD reluctant to incorporate a lot of community/civilian input and distrustful of non-police personnel (including academic experts such as Dr. Villanueva and Dr. Ferguson).
- Academy leadership is currently in the process of selecting and purchasing an automated Learning Management System (LMS) to help facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. However, APD is yet to finalize selection and procurement of such a system and appears to be leaning towards funding a less robust system due to budget concerns.

Community Input and Participation

- The length of the planned 144th cadet class has been cut from 32 weeks to 28 weeks. In doing this, the Academy plans to (a) cut all intermediate courses, which will be taught over the first two years following graduation from the Academy, and (b) add 30 hours of Community Engagement programming that was not previously included. The 28-week training program will include all state-mandated TCOLE and BPOC requirements and some additional tactical training courses.
  - Although Kroll has not yet seen the precise details of the planned 30-hours of community engagement programming, the stated intent is to expand upon the level of participation and input from community leaders who will be invited to speak to the cadets. The Academy had previously devoted seven one-hour blocks of time to guest appearances from community leaders, which purportedly will be expanded to 30 hours.
  - Some of the organizations APD is currently seeking to engage with are noted below:
    - Life Anew Restorative Justice
    - Measure Austin
    - Citizen Led Austin Public Safety Partnership (CLASP)

[10] According to Dr. Ferguson, although many instructors expressed openness to further transitioning to an adult learning environment, the feedback from the symposium was disappointing (survey results were mixed with only nine surveys completed).

- Mobile Loaves & Fishes
- Mexican Consulate
- Refugee & immigrant Outreach
- President for the Texas Association of the Deaf
- Transgender and Gender Marker Project
- Austin Justice Coalition
- Reimaging Public Safety Task Force
- National Alliance on Mental illness (NAMI)
- The Settlement Home for Children
- Mothers Against Drunk Driving (MADD)
- The Jeremiah Project
- The African American Youth Generation

- Community Video Review Panel (CVRP): The recently completed Community Report of the Video Review Panel found that the vast majority of the approximately 110 training videos reviewed over a seven-month period were not only outdated and "disappointing in quality" but also contained "unprofessional or sensationalistic commentary" and perpetuated harmful stereotypes "against Black and Brown communities." The report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues.
- Although difficulties were encountered initially in attempts to establish trust and communication between the APD and community representatives, the end result demonstrated a healthy collaboration, with several Academy leaders and instructors actively participating in the review panel's work. As a result of that approximately seven-month effort, the Academy has accepted all the CVRP's recommendations concerning the video content and is actively making changes to its video library in response to the panel's recommendations.
    - The Academy is currently in the process of eliminating all videos that were found to be offensive or insensitive to community concerns and replacing them where possible with more up-to-date and non-offensive depictions of subjects interacting with more diverse officers.
    - In addition, Academy instructors are actively searching for appropriate replacement videos that more effectively depict the right way to do things, as opposed to videos demonstrating what not to do, as was the case with many of the videos reviewed by the panel.
- APD is currently in the process of establishing a formalized system to comprehensively review, with community input, all future video content that has not otherwise been reviewed by the CVRP.

Professionalism and Passion of Instructors

- Kroll has been uniformly impressed with the passion and commitment to teaching and the mission of policing exemplified by the Academy's current leaders and instructors. They appear genuinely open to ideas that will help make them better instructors and want cadets to succeed and develop into first-rate police officers.
- Kroll notes that changing the culture of an institution and long-term notions embedded into the way things have always been done is no easy task. While most instructors and supervisors state they

are open to working with content experts and incorporating active learning strategies, they are passively awaiting guidance and input from leadership, including the hiring of a new ODTM, to help advise them on changes to teaching methods and course content.

- Nevertheless, Academy staff appears open to incorporating outside civilian content experts as instructors in certain courses (e.g., History of Policing and some DEI-related courses), if done in coordination and partnership with APD personnel.
    - At present, however, except for History of Policing and Race in Austin (discussed below) there does not appear to be any intentional or clearly-articulated plans to incorporate outside content experts (e.g., criminal defense attorney to talk about search & seizure law from a defense perspective; homeless advocate to discuss issues faced by the homeless population; mental health expert to address relevant issues, etc.)
    - The Academy has agreed to schedule eight hours to the History of Policing, including four hours on the History of Policing and Race in Austin, a new course designed by two University of Texas law professors and recommended by OPO. We understand that APD is currently in the process of arranging for an outside content expert to co-teach this course to the 144th cadet class with an African American member of Academy staff.

Cadet Injuries

- According to Appendix I of the Community + Equity Assessment Series report, and as confirmed by Kroll through APD-provided data, cadet injuries over the past five years have fluctuated as follows:

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	1
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	1
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	2
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	1
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	3
Covid-19	--	--	--	--	--	56
TOTAL	**90**	**123**	**77**	**116**	**98**	**68**

- According to data provided by APD, from 2015 to 2020, at least 509 cadet injuries occurred at the Academy. The racial and ethnic breakdown shows that, of these 509 injuries, 348 (68.37%) were to white cadets, 85 (16.7%) to Hispanic cadets, 57 (11.2%) to Black cadets, and 19 (3.73%) to Asian cadets. As noted in the Equity Assessment report, "[w]hile the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the

percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%)."[11]

- Academy leadership noted that better reporting and documentation of cadet injuries may have contributed to the increased numbers of reported injuries in recent years.
- The Academy requires a healthy dose of physical fitness and defensive tactics in an effort to prepare cadets for any number of crisis situations they may confront at some point in their careers as police officers. As noted by Chief Manley, "we pepper spray our cadets because officers need to know what it is like. We have our cadets engage in boxing because we hire people who have never fought before, and we want them to be okay when this happens after they become officers."

Graduation Rates

- Graduation rates at the Academy over the last five years show similar racial and gender disparities:

Academy Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[12]

- APD's data illustrates that Black cadets are less likely than their peers to graduate from the Academy, and more likely to be injured, than any other race. Female cadets also have lower graduation rates than white and Hispanic male cadets. As a result, Black and female cadets graduating from the Academy are underrepresented when compared to the population of Austin as a whole.
    - In terms of statistical significance tests (Chi-square analyses) overall Black cadets are significantly ($p < .01$) less likely than Non-Black cadets to graduate over the entire period

[11] "Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications," page 9 (December 14, 2020).

[12] According to the Report of the Community + APD Equity Assessment Series, City of Austin Equity Office, December 14, 2020, page 8, APD has recruited one Asian woman who has successfully completed the Academy within the past five years.

examined here.[13] This pattern was only true for Black cadets and not any other racial/ethnic group.

- As noted elsewhere, however, there appears to be a shift in this long-term pattern. The race differences were not significant in the last two cadet classes (142M and 143). Thus, the overall race-graduation differences (particularly Black cadet failure patterns) were driven by pre-2020 patterns.
- Overall, female cadets are also significantly ($p < .01$) less likely than male cadets to graduate over the entire period of study. However, the gender differences were not significant in the last two cadet classes (142M and 143). Thus, the overall gender-graduation differences were driven by pre-2020 patterns.
- Limited statistical power inhibits our ability to determine whether Hispanic females and Black females fail to graduate at a divergent rate than all other groups. However, each factor alone (race and gender) were clear predictors of graduation in the pre-2020 trends.

- Kroll notes, however, that the positive changes in the diversity of Academy leadership and to some of the more physically and psychologically intense components of the Academy (i.e., elimination of SRT and modification of "Fight Day" to "Will to Win"), as well as a distinct philosophical shift among Academy leadership to actively encourage all cadets to succeed, suggests that the Academy is conscious of and working to eliminate these inequities.
- The unique relationship that develops between APD recruiters and cadets is currently underutilized. Recruiters typically get to know cadets well and develop a more personal relationship with them than do Academy instructors. In the past, APD recruiters would reach out to a cadet if he or she left the Academy to obtain feedback and discuss what happened. We are told that this practice has been discontinued.

Crisis Intervention Training

- The Academy has greatly improved its crisis intervention team (CIT) training in recent years. The 144th cadet class schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness (NAMI), helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families." Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety." (https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs).
- The CIT model is a police-led, collaborative response for behavioral health crises that involves training patrol officers to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis and to refer those individuals to appropriate services, as opposed to conducting an arrest, when possible. The goals of CIT programs are to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services

[13] The Chi-Square results were derived from the Pearson Chi-Square statistic. Chi-square analyses is based on the null/alternative hypothesis counterfactual framework that assesses whether there are differences across categorical measures (e.g., race and sex with graduation). The corresponding p-value follows the conventional framework of .01 (or 99% confidence). Thus, significant findings suggest the differences across categories (e.g., Black vs. non-Black with graduation) is beyond chance where $p < .01$.

for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges. These programs have most traditionally been used to address individuals experiencing mental health- or substance use-related crises.

- CIT training not only provides officers with more tools to do their jobs safely and effectively, but also improves their knowledge of mental illness and community resources.
- Several evaluations have found that CIT training improves officer knowledge surrounding behavioral health-related challenges, reduces stigma associated with behavioral health, and increases officer empathy and confidence in their ability to successfully intervene in a crisis incident.
- Researchers have found that CIT training successfully increases officer awareness of behavioral health services within their communities and their support for referring individuals in crisis to these services.
- Evaluations show that CIT training increases officer familiarity with de-escalation techniques and support for de-escalating crisis events.

De-escalation / Use of Force Training

- Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum.
- ICAT is an evidence-based best practice designed by the Police Executive Research Forum (PERF) to help police officers "safely and professionally resolve critical incidents involving subjects who may pose a danger to themselves or others but who are not armed with firearms." (https://www.policeforum.org/assets/icattrainingguide.pdf). In its original format, ICAT training is designed as a 16-hour training block.
- ICAT training instructs police officers in de-escalation tactics and critical thinking skills for the management of potentially volatile police-citizen encounters, encouraging the integration of crisis recognition and intervention, communication skills, and operational tactics in police responses. This training is designed for patrol officers responding to circumstances involving persons in crisis – that is, individuals that may be behaving erratically due to mental health concerns, substance use, situational stress, and/or intellectual/developmental disabilities.
- The ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries (Engel et al., 2020).
    - Although officers have fewer options when dealing with threats involving firearms, ICAT is a training guide designed to fill a critical gap in training police officers how to respond to volatile situations in which subjects are behaving erratically and often dangerously, while unarmed or armed with a weapon other than a firearm (e.g., knife, baseball bat, rock, etc.). As explained by PERF, the ICAT Training Guide "includes model lesson plans and support materials (including Power Point presentations, videos, and other resources) in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics. ICAT then integrates these skills and provides opportunities to practice them through video case studies and scenario-based training exercises."

- ICAT's course content includes Legal Concepts, Critical Decision-Making, Crisis Recognition, Communication, and Tactics. Students learn to demonstrate key verbal communications skills that are critical to defusing (de-escalating) tense situations and gaining voluntary compliance. Students also learn to explain concepts such as "tactical pause," distance plus cover equals time, tactical repositioning, and continual assessment, all of which are essential to de-escalating encounters with citizens in crisis.

Preliminary Recommendations

As noted above, the APD and Training Academy have implemented a number of steps to address issues raised by the City, the community, and independent consultants. The Academy has made significant strides in diversifying its leadership and instructors to better reflect the community APD serves, although it has more work to do at the instructor level. The group of leaders and instructors presently at the Academy are highly professional, passionate about what they do, and genuinely interested in making the Academy a best-in-class institution.

That said, APD has been reluctant to embrace some of the recommendations provided to date concerning course content and teaching methods, and an even stronger reluctance to change the paramilitary nature of the Academy in any fundamental way. The relationship between APD leadership and certain segments of the community remain tense and broken, with several community activists unwilling even to engage with the current Chief. As with many police departments across the country, the police professionals feel like they are under constant attack and not given credit for much of the good work and public service they do, while the many and varied community voices most engaged in criminal justice and police reform efforts feel disrespected and unheard.[14]

But there are moves in the right direction. First, creating the Organizational Development and Training Manager (ODTM) position, so that an educational expert can review curriculum and work with instructors to develop ways to incorporate creative adult learning strategies into the training, was a proactive, positive initiative that should pay long-term dividends. Moreover, providing the ODTM with the civilian equivalent rank of Commander, if backed by leadership, will help further transition the Academy into a true adult-learning educational institution. Second, the collaborative work between APD and the Community Video Review Panel (CVRP), while difficult and turbulent at times, ultimately produced an excellent example of police-community collaboration that can and should form the foundation of future relationship building between APD and the citizens it serves. Kroll knows of no other academy in the United States that has evaluated its training videos for instances of bias and inappropriate content in this manner. The lessons learned and hard work by the Austin community and police officials in this effort is an example and practice that every police academy in the nation should emulate. Third, the decision to expand the planned 144th cadet class to include approximately 30 hours of outside community input and participation in cadet training, and the addition of course content such as The History of Policing and Race in Austin – to be taught in part by a locally-based subject matter expert – are concrete steps that further demonstrate a commitment by APD to improve its community relationships and train cadets in a manner more attuned to the community policing, guardian model that the City and the community desire.

[14] Kroll notes that Chief Manley has expressed to Kroll a willingness to engage with the community despite resistance from some vocal community activists. Additionally, the Acknowledgement section of the Joyce James Consulting Report commended the willingness of the Chief and his command team, and other sworn and civilian staff, to engage in open and honest dialogue that her team facilitated about institutional and structural racism. This would appear to be a step in the right direction for APD to begin honestly addressing racism institutionally.

There are a number of additional and necessary measures that can be addressed in the short run, including teaching methods and incorporation of adult learning strategies, substantive course content, community engagement, input and participation, and increased use of civilian content experts. Other more fundamental issues, such as significant changes to Academy culture, philosophy, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run with existing leadership, fundamental change cannot realistically be expected to happen overnight.

For these reasons, we have divided our preliminary recommendations into short-term and long-term measures, as noted below.

Short-term Measures

To begin addressing the key concerns expressed by the community and the findings, analysis, and recommendations of the reports and assessments conducted to date, and based on our preliminary findings noted above, the following steps should be completed before the start of the 144th cadet class:

- The City of Austin should immediately hire a replacement for Dr. Sara Villanueva as the Academy's ODTM. This person needs to have a clearly articulated mandate to assist Academy instructors in implementing and incorporating adult/active learning models throughout the ten courses examined as part of Dr. Ferguson's curriculum review and as set forth in the Level 1 and 2 recommendations in his June 2020 report, as well as implementing the recommendations of Dr. Villanueva in her Review Analysis and Strategic Plan report of May 2020, pages 10-11.
    - To help facilitate the transition to a new ODTM, the City should arrange contractually for Dr. Villanueva to assist the new ODTM in getting fully acclimated and on-boarded (Dr. Villanueva has expressed a willingness to assist in this manner). Although the position is officially ranked as the civilian equivalent of Commander, there was significant friction between sworn Academy staff and the ODTM position this past year. Although we understand state law currently prevents sworn personnel from being directed by civilian personnel, and while legislative efforts should be made to change that law, in the short term APD leadership needs to make clear that the ODTM speaks on behalf of leadership.
- The City should also, as soon as practicable, hire and on-board a Training Specialist to work with the ODTM and Academy Commander in updating and standardizing curriculum and support materials to better reflect adult and active learning strategies and eventually help transition the Academy to a blended civilian and police-led training academy with outside civilian instructors and APD Academy instructors teaching cadets, individually or jointly as appropriate for the course content.
- APD should expedite the procurement process to begin implementation of an automated Learning Management System (LMS) that will facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a

best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class.

- The Academy should formalize an internal review panel responsible for reviewing each instructor's syllabi and curriculum and suggesting ways to improve each class in the Academy. The panel should include the ODTM and Training Specialist, along with selected Academy and field supervisors, instructors, officers, and community representation. The panel could start with reviewing and evaluating video presentations of the training that is intended to be presented to the next cadet class.
    - With the assistance of the ODTM and Training Specialist, and in coordination with the Commander and Academy supervisors, all course content, including courses taught by the Learned Skills Unit and Cadet Training Unit, need to be evaluated for ways to incorporate DEI content into all aspects of training. The current siloed approach, which essentially isolates DEI courses from police tactical training, should be modified to ensure consistency of messaging and a fundamental emphasis on the humanity and complexity of the citizens APD serves and protects. "Checking the box" once a course is completed needs to be resisted. Teaching about multiculturalism and the importance of community relations in week one will be undermined if we then train "warriors" to counter all threats in later weeks. All courses should be reinforced, formally and informally, throughout the cadet training program.
    - Cadets must be thoroughly and effectively trained on all proper defensive tactics, arrest and control techniques, crowd control, and so on. But the messaging throughout the Academy needs to consistently emphasize the ethical responsibilities of policing, teach a sensitivity to legitimate community fears that are based in history, and recognize the complexity and nuance of the human beings that cadets will interact with on a daily basis. Cadets must understand that more than 95% of day-to-day policing is more akin to social work than policing. The single most important skill that a police officer can develop is the ability to effectively interact with and relate to a diverse community of people in ways that are honest, authentic, and transparent. Implicit messages, whether from training videos or course content, suggesting that certain people or neighborhoods are more "dangerous" than others, must be resisted and countered.
- Establish a formal process to continue a community review of police training videos that were not reviewed previously by the recently concluded Community Video Review Panel. This should include a process to re-review training videos every two years or so. Once a process is formalized, ongoing consultation should occur between APD and the CVRP concerning any new training videos proposed for use in future training courses to ensure that full community input is embedded into Academy planning and implemented in training.
- "Will-to-Win" should be converted to a "Self-Defense" exercise near the end of Academy training, after cadets have been properly taught and tested on all appropriate defensive tactics, hand-to-hand encounters, and similar tactics.[15] This "Self-Defense" session should be video recorded to ensure that appropriate levels of force are being used by the assigned instructor according to Academy protocols. We understand and agree with the need to prepare cadets for aggressive and hostile encounters, but "Will-to-Win" sends a message that implicitly affirms the "us vs. them"

[15] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

mentality that must be eliminated. There is a difference between properly preparing cadets for certain types of encounters and giving them the tools to protect themselves, but another thing to message that the object in hostile encounters with a member of the public is to "win" – which implies that someone must "lose." Officers must be trained on how to properly protect themselves and others, but proper messaging is crucial to ensure that the training exercise does not overtake the fundamental purpose of policing.

  - Kroll recommends a defensive tactics program that has cadets learn the basic skills starting early on in the Academy, where cadets work with instructors and other cadets to learn proper defensive tactics before they are tested near the end of training, either with a controlled/supervised period of time in a ring or other scenario-based training. This will assist in team building and allow cadets to learn and build the skills to succeed.
  - APD spends hundreds of thousands of dollars to recruit and conduct background investigations of cadets. Accordingly, every effort should be made to have cadets succeed by giving them the tools to do so. Self-defense testing and challenges should occur after PT training when recruits are warmed up and stretched out to help reduce injuries.
  - Ensuring use of the phrases "defending oneself" and "self-defense" will also help address the "warrior vs. guardian" issue.

- The use of the sandpit and having cadets carry sandbags as punishment for "messing up" should also be modified or eliminated.[16] The shift from SRT to TBX is a positive development; team building exercises are important and necessary, as is physical fitness and conditioning. We understand that there is a certain level of physical and psychological stress associated with policing and with training. But the old-school manner of incessantly yelling and screaming at cadets, and other humiliation tactics, serve little purpose other than to instill a military-like, bootcamp atmosphere that is counterproductive to preparing officers to serve as guardians of the community.
- Physical fitness, team building, and applying stressful situations to cadets should be completely separated from any academic training. Having cadets do extra pushups, sit ups, and other exercises while properly attired in athletic gear during formalized physical training programs (when cadets have properly stretched and warmed up) will reduce injuries. Once PT is concluded, the cadets should be in an academic learning environment in classrooms free of physical and unnecessary psychological stress. The rigors of learning course work are stressful enough. Instead of carrying around sandbags for mistakes or shortcomings, for example, cadets could be required to write an administrative report about their failure and how they plan to address it. This will incentivize cadets to correct their mistakes while helping develop the skill most officers will be spending considerable time doing throughout their careers (writing reports), while also documenting a non-subjective review of the cadet's progress.
- As part of its community engagement programming, the Academy should proactively reach out to a wide variety of community leaders and activists who are willing to work productively with APD in presenting genuine community perspectives and concerns about policing. This sort of community participation can be a mutually beneficial exercise that begins to slowly break down barriers of communication and enhance the learning experiences of the cadets.

[16] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

- To its credit, the Academy has scheduled "The History of Policing and Race in Austin" into the 144th cadet class curriculum and has arranged for a locally based subject matter expert to co-teach the course with an African American APD sergeant. APD should ensure that the course covers the content outlined in the OPO-approved curriculum and is reinforced in other courses throughout the Academy.
    - Serious consideration should be given to coupling this training with community outreach and immersion strategies, such as having cadets spend time in a food pantry or homeless shelter, attend community meetings out in the neighborhoods, meet with local community leaders, and spend time visiting mental health and substance abuse programs.
- The Academy should thoroughly review all other DEI-related courses and determine which may benefit from an outside, more academically oriented civilian content expert or a community perspective. Most of the DEI courses can be taught more effectively pursuant to a co-facilitation model that includes input and perspectives of civilian instructors and/or community members in both the design and delivery of the training. These courses should be co-taught by APD instructors in cooperation with appropriate subject matter academic experts or community allies who can provide direct community examples, round out perspectives, and foster valuable community partnerships. It is important that the people presenting in these courses have credibility with both the community and law enforcement.
- Chief Manley should consider tapping into the resources of his existing officer base to temporarily assign some diverse officers of exceptional skills to assist with Academy instruction, particularly in courses where a diverse perspective would be beneficial and worthwhile (one of the recurring criticisms of the cadet surveys conducted by Dr. Ferguson was that the Academy often had non-diverse instructors teaching classes like multiculturalism and cultural diversity). For example, there is currently a diverse pool of officers in the Recruiting Unit who know and have existing relationships with cadets and who, with some additional training, could easily supplement training staff and enhance the diversity of instructors teaching these courses.
- The Academy should consider the feasibility of incorporating Beyond Diversity by Dr. Glenn Singleton or the Groundwater Analysis training workshop by Joyce James Consulting LLC into the Academy curriculum and/or as part of annual training for Academy instructors and supervisors (and eventually all officers).
- The Academy should reinstitute the practice of following-up with a cadet who leaves the Academy for any reason. The recruiter who had developed the relationship with the cadet might be able to identify an opportunity for the cadet to return to the Academy in a later class if circumstances allow. It also provides an opportunity for feedback to identify any changes needed in the training or recruiting process to ensure future success.
- The Academy should develop a mentorship program for all cadets, especially recruits of color, that will provide additional support for cadets and help them succeed at the Academy. These efforts would assist Commander Johnson with her stated desire to see Academy staff become more supportive and encouraging in helping all cadets succeed.
- The City should require an ongoing, independent review of the Academy by an outside monitor once the 144th cadet class begins to ensure implementation of the above recommendations and to help ensure that further adjustments and improvements are made moving forward.

- Kroll understands that many would like to see a completely revised training program that has addressed all issues before another class starts. We caution, however, that until instructors are actively training recruits, it will be difficult to fully assess whether the changes and recommendations currently being made or adopted are sufficient.

Long-Term Measures

To address some of the cultural and attitudinal concerns expressed by the community leaders we spoke with, and as set forth in the CVRP report, Equity Assessment report, and the other consultant reports addressing APD training, we recommend that, absent exceptional circumstances, the following measures be implemented prior to the start of the 145th cadet class:

- To build on the positive collaboration between the APD and the community in evaluating for bias and other inappropriate content in the APD's training videos, APD and the City should consider working with a professional media literacy educator to help develop effective teaching videos moving forward that will have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy and behavior. While it's one thing to analyze what one sees and hears, it's another thing to develop effective teaching videos as tools to undo engrained bias, worldviews and attitudes that we all are born into, and how we have come to "interpret" living realities. It will take real knowledge and skills to overturn what is so embedded in the recruits that come to the Academy. This will be true regardless of race, gender, or class status.
    - A renowned national leader in "media literacy" (e.g., Professor Renee Hobbs, founder of the Harrington School of Communications and Media at the University of Rhode Island or a similar expert from an Austin-area college or university) could help bring credibility to this process.
- APD and the Academy should consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers. A common problem in many police departments is that, once certain practices are taught in the Academy, the new officer learns a "different way" of doing things on the street. This undermines what is taught at the Academy and compromises an academy's efforts in staying up to date with best practices and any positive reform measures implemented at the cadet training level.
- APD should develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level, to increase the number of African American, Hispanic/Latinx, Asian, and female instructors assigned to the Academy.
- Academy class schedules should be revised to eliminate 40-hour blocks of course content to such things as Penal Code, Traffic Code, and Arrest Search and Seizure. These courses should be spread out over the length of the Academy, so that no more than two to four hours per day, three days a week are devoted to these important, but often dry and legally important subjects.[17] Cadets need the opportunity to study and absorb the material that is taught, with an opportunity to ask questions and be tested in a progressive, cumulative manner.

[17] We understand that this recommendation may require approval from the Texas Commission on Law Enforcement (TCOLE), and thus we have not included it as a short-term recommendation to be implemented prior to the 144th cadet class.

- The Academy should expand its physical fitness training to a daily regimen, to be scheduled first thing in the morning (and separated from all academic content – except for physical training associated with self-defense and other defensive tactics).[18]
- Based on Koll's initial review, we have learned that the physical fitness requirements at hire may not be predictive of the physical fitness requirements in the Academy, and the physical fitness requirements in the Academy may not positively correlate with the physical fitness requirements of police officers post-graduation. For example, we have been told that many female applicants pass the initial physical fitness test and many African American male applicants fail the initial physical fitness test, yet both of these groups seem to struggle with the physical fitness requirements at the Academy. We also understand that there are essentially no physical fitness requirements of police officers once they have graduated from the Academy. As such, further analysis and adjustments of these relationships are required to ensure that pre-Academy, Academy, and post-Academy physical fitness standards are consistent with successful job performance. These potential inconsistencies lend further credence to Kroll's suggestions about physical training requirements and sequencing at the Academy, although this will only partially address questions about the physical fitness required by APD.
- The Academy should develop a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to officially starting at the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.
- Although we understand that the ICAT training has been adopted department wide as required in-service training for all sworn personnel, APD should require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. Departments that have widely adopted and implemented ICAT in other parts of the country have seen a marked decrease in use-of-force incidents.
    - Up-to-date de-escalation training needs to be delivered department wide, reinforced through use-of-force policy, supported by field supervisors, and included as a component of use-of-force reviews. Without a holistic approach, training in the academy will be "undone" once cadets graduate and are in the field.
    - We also recognize the importance of the Community Video Review Panel recommendations to this training. Some of the videos used in the Academy's existing ICAT training were offensive to the community because it reinforced stereotypes involving Black women and communities of color overall. PERF emphasizes that ICAT training is flexible and adaptable, encouraging that agencies be creative in how they incorporate the training modules into new or existing programs on de-escalation, tactical communication, or crisis intervention. Many agencies use different videos and scenarios that better fit within their organizational and community context. These videos could easily be changed without losing any training content.
    - The ICAT training provides comprehensive instruction on critical thinking, crisis recognition, tactical communications, continual assessment, and scenario-based training.

[18] Kroll understands that the current training facility supports all three of the City's public safety departments and does not currently have the capacity to implement this recommendation without the creation of more lockers and shower space. Accordingly, we have placed this as a long-term (as opposed to short-term) recommendation.

As the Academy is in the process of implementing the CVRP's recommendations regarding use-of-force videos, once there is a consensus among the CVRP that the videos used are gender and racially appropriate, it will enhance the existing ICAT curriculum and provide an appropriate equity lens to APD officers during de-escalation training.

- To promote instructor wellness and avoid burnout, low morale, and reduced job performance, there needs to be some recovery time built into the intervening period between cadet classes. We recognize police departments always strive to reach their complement of new sworn officers, but it is important to be mindful that instructors have little down time from teaching between the end of one cadet class and the beginning of another (see Dr. Villanueva report, page 9).
- Although achieving perfection is not possible, as the Academy and APD are human institutions, building a long-term system of internal and external review of training methods and Academy effectiveness is essential to institutionalizing the search for excellence. Training police officers to become community-oriented, empathetic, and compassionate guardians of the public in a dynamic and diverse city, while promoting officer health and wellness, is a constantly evolving process. For this reason, police academies should be in a constant state of review and improvement.

Case No. 1:22-cv-655

COMPLAINT
EXHIBIT E

KROLL

Austin Police Department: Review and Assessment of Training Academy

April 23, 2021

Prepared for
City of Austin, Office of Police Oversight / City Manager's Office

Status
Final Report

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Contents

1 INTRODUCTION 1

2 EXECUTIVE SUMMARY 3

3 BACKGROUND AND CONTEXT 7

4 BEST PRACTICES FOR POLICE ACADEMIES 11

5 APD TRAINING ACADEMY – FINDINGS AND ANALYSIS 31

5.1 Academy Diversity 32

5.2 Academy Culture 38

5.3 Teaching Methods / Adult Learning 51

5.4 Cultural Competency Training / DEI Content 55

5.5 Community Input and Participation 66

5.6 Professionalism of Instructors 70

5.7 Cadet Injuries / Graduation Rates 70

5.8 Crisis Intervention Team Training 77

5.9 Additional De-escalation / Use of Force Training 80

5.10 Non-English-Speaking Residents and Persons with Disabilities 81

5.11 Field Training Officer Program 81

6 COMMUNITY FEEDBACK 84

7 APD TRAINING ACADEMY – RECOMMENDATIONS 92

7.1 Short-term Measures 93

7.2 Long-Term Measures 97

8 APD IMPLEMENTATION / ACTION PLAN 101

9 CONCLUSION 108

10 APPENDIX 109

10.1 Kroll Project Team 109

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1 INTRODUCTION

On November 12, 2020, the City of Austin's Office of Police Oversight (OPO), in consultation with the City Manager's Office (CMO), retained Kroll Associates, Inc. (Kroll) to review and evaluate the Austin Police Department (APD) on the extent to which forms of racism, bigotry, and discrimination are present in the protocols, practices, and behaviors of the APD. The initial phase of Kroll's review is limited to an assessment of the APD Training Academy (Academy) – specifically, the Academy's ability and readiness to prepare cadets for policing in a multi-ethnic, diverse urban population consistent with best practices.[1]

The City of Austin (City), as expressed through City Council Resolution 66 and the work of the Reimagining Public Safety Task Force, and as articulated in the 2020 Strategic Plan of the APD Training Academy, seeks a transformational police academy that transparently addresses issues of racial and gender equity, emphasizes de-escalation tactics that minimize the use of force, and moves away from a regimented, paramilitary culture into a learning academy that "promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships."[2]

In performing this review, Kroll reviewed and considered the reports and assessments noted below that examined many of the issues addressed in this report, including the training academy's culture, teaching methods, approaches to racial and gender equity, and course/curriculum content:

1. APD Training Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020)
2. APD Training Academy Curriculum Review by Dr. Miguel Ferguson
    a. Preliminary Report (June 19, 2020)
    b. Final Report (April 5, 2021)
3. Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications (December 14, 2020)
4. Racial Inequities and Institutional Racism, Joyce James Consulting (November 2020)
5. Community Report: Video Review Panel (January 18, 2021)
6. Community Video Review Panel (CVRP): APD Training Academy Videos, Final Report (January 14, 2021), and CVRP Summary Reports from July 2020 to November 16, 2020.

In addition, we conducted over 60 interviews and meetings with a broad array of stakeholders (more than 100 individuals), including, but not limited to, the following:

- Dr. Sara Villanueva ("APD Training Academy Review Analysis and Strategic Plan");
- Dr. Miguel Ferguson ("APD Training Academy Curriculum Review");
- City of Austin Equity Office staff ("Community + APD Equity Assessment Series");
- Community Video Review Panel ("Community Video Review Panel Report");
- Joyce James Consulting staff ("Racial Inequities and Institutional Racism");
- Austin community leaders (Just Liberty, NAACP, Austin Area Urban League, Austin Justice Coalition, Texas Appleseed, MEASURE);
- Greater Austin Crime Commission;
- Community Police Review Commission;

[1] Kroll's retention is pursuant to contract MA 4400 PA210000018.

[2] Sara Villanueva, "Review Analysis and Strategic Plan" (Austin Police Department Training Academy, May 2020), 13.

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- APD leadership (Chief Brian Manley, Interim Chief Joseph Chacon, and Chief of Staff Troy Gay);
- Academy leadership (Assistant Chief Brent Dupre, Assistant Chief James Mason, Commander Mark Spangler, Commander Catherine Johnson, and Division Manager Dr. Anne Kringen);
- Academy supervisors – Training and Recruiting Units;
- Academy instructors;
- Representatives of the Austin Police Association and affinity associations:
  - Austin Police Women's Association
  - Lesbian and Gay Peace Officers Association
  - Texas Peace Officers Association
  - Amigos en Azul Police Association
- Texas Commission on Law Enforcement (TCOLE) leadership;
- Former APD Training Academy cadets and newly sworn officers;
- Austin City Council;
- City of Austin officials and staff;
- Austin Equity Office;
- Austin community representatives – presentation / community forum.

Kroll also reviewed a large volume of documents from the APD and the City, including Academy curricula, course content and lesson plans, instructor CVs, organizational charts, policy manuals, procedures and protocols, APD General Orders, statistical data, cadet manuals, class schedules, recruitment materials, employee rosters, and other documentation and data. Finally, Kroll conducted extensive research on best practices in police training academies around the United States.

This report details our findings and recommendations concerning the APD Training Academy. Section 2 contains an Executive Summary of the report. Section 3 explains the background and context that led to this review. Section 4 provides examples of evidence-based best practices in police training techniques that have been proven effective in changing police culture, reducing use of force incidents, enhancing police responses to mental health crises, and improving police-community relations. Section 5 outlines our detailed findings and observations concerning key areas of focus. Section 6 summarizes the community input and feedback Kroll received throughout our review process. Section 7 provides a series of recommendations to improve APD's ability to prepare cadets for policing in a diverse urban environment in a manner that fosters police-community relations, enhances public safety, and minimizes incidents of conflict and force. The recommendations include short-term measures to be implemented before the 144th cadet class and long-term measures to be implemented before the 145th cadet class. Section 8 outlines APD's up-to-date efforts to implement the recommendations. Finally, Section 9 provides Kroll's brief concluding remarks.

Kroll wishes to thank the City of Austin, the many community representatives with whom we spoke, and the Austin Police Department for their cooperation and assistance in this review. While everyone may not agree with each of Kroll's findings and recommendations, Kroll has attempted to describe the issues fairly and, where applicable, identify the need for reforms. It has been a pleasure for Kroll to speak with so many talented people and professionals among City staff, the APD, and the community. The commitment, dedication, and good faith of everyone with whom we interacted were readily apparent.

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2 EXECUTIVE SUMMARY

In this report, Kroll recommends a shift away from a stress-oriented military-style academy toward a resiliency-based approach supported by adult learning and student-centered instruction. We believe that, consistent with national best practices, it is essential that the APD Training Academy adopt a guardian-centric approach that emphasizes service to the community, while at the same time preparing officers to effectively react and respond to crisis situations when they occur. We encourage APD to become an evidence-based learning organization, where changes in Academy training are rigorously tested and research findings are routinely shared with Academy staff to inform continual improvements in the curricula offered.

In assessing the APD Training Academy, Kroll focused on many key areas, including those highlighted below. Although the primary emphasis of our review has been on the readiness of the planned 144th cadet class in light of the City's stated objectives, we also examined the long-term potential for developing a transformational, best-in-class police academy. Below is a brief summary of our key findings and observations:

- **Academy Diversity.** Academy leadership and supervisory staff currently reflects a significantly improved level of gender, racial, and ethnic diversity than in years past. While Academy instructors in the Training Unit are less diverse than the supervisory staff, the department is moving in the right direction. The Recruiting Unit also contains a diverse team that has developed an effective outreach program, which targets historically black colleges and universities, Latinx organizations, women, and military veterans. Moreover, the list of cadet candidates who are currently expected to attend the 144th cadet class consists of one of the most diverse classes in recent APD history.

- **LGBTQ+ Training.** While cadets who have graduated from the Academy within the past several years have received excellent training on transgender and LGBTQ issues, this training has not been pushed out to the department as a whole. Consequently, officers who graduated from the Academy more than seven years ago—including the "Fifth Floor" leadership at APD—have not received any department-sanctioned training on understanding the unique issues associated with the LGBTQ+ community. The Academy also needs to improve awareness of LGBTQ issues to the tactical trainers in the Learned Skills Unit.

- **Anti-racism Training.** APD and Academy leadership recently participated in two excellent anti-racism workshops, and the Academy is incorporating Groundwater Analysis Racial Equity training into the curriculum of the 144th cadet class, as well as future Academy classes.

- **Academy Culture.** The culture of a police training academy reflects the culture of a department and impacts the mindset and approach to policing that newly sworn officers adopt upon graduation. Culture is perhaps the most difficult thing to change in any organization. How cadets are treated, how they are expected to act, and what explicit and implicit messages are communicated to cadets all impact the type of officer a training academy develops prior to sending newly sworn officers out into the community. In conducting this review, Kroll noted a divergent set of views regarding current Academy culture. On the one hand, some former cadets who were forced to resign from the 137th and 140th cadet classes described an Academy culture that was "toxic", "abusive" and "combative" and teaching methods that embraced "intimidation tactics." Instructors relentlessly ridiculed and mocked certain cadets during physical training, with an apparent bias against female cadets, which was primarily driven by the perception that particular cadets could not meet the required physical

fitness expectations needed to become an APD officer. On the other hand, many APD officers we interviewed believe that the manner in which the Academy prepares cadets is necessary and that the allegedly abusive practices noted above are not reflective of the true Academy culture. Most APD officers contend nevertheless that stressful tactics are essential to preparing cadets for what can be a dangerous and pressure-filled job. These officers contend that, without an element of physical and psychological stress applied during training, cadets will be unprepared for the many stressful encounters they will inevitably confront, at the risk of public safety and officer safety.

- **Paramilitary Training Model.** The Academy at present remains a predominantly paramilitary training model. APD leadership believes that some aspects of a paramilitary structure are essential to ensure cadets are attuned to the chain of command and clear lines of authority, and to prepare cadets to effectively respond in crisis situations. While Kroll agrees that training officers to deal with real world threats, which can include exercises that elevate a cadet's heart rate and induce the physical effects of being placed in fear and under stress, is necessary, this cannot be at the expense of training cadets to be community-oriented guardians at their core.

- **Best Practices – Resiliency-based Training.** As noted in Section 4 of this report, police academies can establish a guardian-centric culture that focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, "resiliency-based" training has been shown to have many positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression. By strengthening cadets' critical decision-making skills, communication, and emotional intelligence skills, cadets will be better prepared to handle the complex situations they are likely to face in the field. We believe this can occur without a strictly regimented, paramilitary foundation.

- **Adult Learning.** The Academy needs to further develop and incorporate adult learning theories into its curriculum and shift away from the rigid, formalistic, lecture-and-listen format that has previously dominated many training courses. Although the Academy currently incorporates much scenario-based teaching into its training, many of its classroom-based courses can be improved. To address this, on March 15, 2021, the Academy hired Dr. Anne Kringen as a Division Manager to fill the role held by the prior Organizational Development and Training Manager. With the backing of Interim Chief Joseph Chacon, Academy staff have been instructed that Dr. Kringen is equivalent in rank to a Commander. One of Dr. Kringen's immediate priorities is to work with instructors to ensure that (1) all lesson plans are updated, (2) content is current and corresponds appropriately to the objectives of the course, and (3) adult learning and innovative teaching techniques are incorporated into course content. On April 1, 2021, Dr. Kringen provided Kroll with an outline of her plan to update all course content. She will also be exploring Academy culture and helping to find the proper balance between academic-style learning, physical and tactical training, disciplinary measures, and chain-of-command structures.

- **Use of Outside Content Experts.** APD has historically been reluctant to incorporate outside community and civilian input into its training programs. However, more recently Academy leadership has expressed a willingness to work with community representatives and outside content experts from local colleges and universities to co-teach or guest speak in appropriate courses. The new Division Manager is currently reviewing course content and meeting with instructors to determine which courses—particularly diversity, equity, and inclusion (DEI) related courses—can effectively be co-taught with an outside subject-matter expert. This will also be an area of responsibility for the newly created Academy Curriculum Review Committee, which will include two outside academic experts and four community representatives.

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- **Curriculum Review.** Kroll reviewed the DEI curriculum review report of Dr. Miguel Ferguson and examined the lesson plans, curricula, and teaching materials provided by Academy staff for courses that address cultural competency training, including the History of Police and Race in America, Cultural Diversity, Professionalism and Ethics, Fair and Impartial Policing, Multiculturalism and Human Relations, Interacting with Transgender Individuals, Law Enforcement and the LBGTQ+ Community, Racial Profiling, Spanish, Interacting with Individuals who are Deaf, and Traumatic and Acquired Brain Injuries. Overall, these courses collectively provide content that is crucial to enhancing the cultural competency of newly sworn officers. Kroll and Dr. Ferguson identified gaps in and provided recommendations for some of the course materials.

- **Community Engagement / Lived Experiences Programming.** The Academy plans to include 37 hours of Community Engagement programming, including approximately 30 additional hours that were not previously included. Although the precise details are currently being developed, it will greatly expand participation and input from the community. The Division Manager is currently working with Academy staff to proactively identify and contact community partners that will provide an invaluable perspective to cadet training. This additional emphasis on community engagement, combined with added course content such as "The History of Police and Race in America" are positive additions to Academy instruction that place a necessary focus on the importance of meaningful police-community interactions and mutual understanding.

- **Community Video Review Panel.** We highlight the recent work of the Community Video Review Panel (Panel), which over seven months found that many of the Academy's training videos contained "unprofessional or sensationalistic commentary" and perpetuated harmful stereotypes "against Black and Brown communities." The Panel report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues. The Panel's recommendations addressed several systemic, community impact, and instructional concerns. Although difficulties were encountered initially in attempts to establish trust and communication between APD and community representatives, ultimately it was a healthy collaboration, with several Academy leaders and instructors actively participating in the Panel's work. APD ultimately accepted the Panel's recommendations and is actively modifying its video library in response. Moreover, APD is currently establishing formal protocols for a continuation of the Panel's work.

- **Instructor Professionalism.** Kroll has been uniformly impressed with the passion and commitment to teaching exemplified by the Academy's current leaders and instructors, who appear genuinely open to ideas that will make them better instructors and help cadets develop into first-rate officers.

- **Cadet Injuries and Graduation Rates.** Based on an examination of the last six years of data, we found that, although nearly 73% of cadets entering the Academy successfully graduate, the likelihood of graduation varies significantly across cadets by race and sex. Specifically, Black and female cadets are statistically less likely to graduate compared to cadets of other races and male cadets, respectively. Overall, the likelihood of graduation is not significantly impacted by injuries within the Academy. However, two groups of cadets significantly differ in their likelihood of graduation and timing of injuries. Specifically, cadets who were female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprised roughly 23% of the classes, were significantly less likely to complete the Academy training, compared to non-Black

males (White males, Hispanic males, and Asian males), which comprised roughly 77% of the classes.

- **Crisis Intervention Team (CIT) Training.** Consistent with best practices, the 144th Academy schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families." Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety."

- **De-escalation Training.** Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum. This also is consistent with best practices, as ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries. Combined with other de-escalation training at the Academy, including verbal de-escalation and aspects of CIT training, the Academy devotes approximately 31 hours overall to de-escalation training. This is slightly above the national average.

- **Field Training Officer Program.** Overall, APD's FTO Program is well structured and documented. However, to further strengthen the program and ensure that what officers learn on the street after graduating is consistent with what they learn in the Academy, and to address other concerns raised by the City and the community concerning the FTO Program, we have included additional long-term recommendations.

Recommendations. Section 7 of the report provides recommendations to improve APD's ability to prepare cadets for policing in a diverse urban environment in a manner that fosters police-community relations, enhances public safety, and minimizes incidents of conflict and force. The short-term measures address adult learning strategies, course content, community engagement, and increased use of content experts, among other things. More foundational measures, such as changing Academy culture, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run, fundamental change cannot realistically be expected to happen overnight. Accordingly, our recommendations include short-term measures to be implemented prior to the start of the 144th cadet class and long-term measures that should be achievable by the 145th cadet class.

Finally, Section 8 outlines APD's up-to-date efforts to implement the recommendations. The planned 144th Academy now encompasses 34 weeks and includes (1) 30 additional hours of community engagement programming, (2) a two-week community immersion orientation program, (3) anti-racism training, (4) a newly designed course on the history of police and race to be co-taught with a local subject-matter expert, (5) near daily physical fitness training, (6) fewer week-long blocks of technical course content that will allow for more effective implementation of adult learning strategies, and (7) a formalized process of community and civilian input into training content to ensure that issues of racial equity and procedural justice are paramount considerations in all aspects of cadet training.

Several of Kroll's recommendations have already been completed or are in the process of being implemented (subject to verification), with a plan in place to complete implementation before the start of the 144th cadet class. Other recommendations are in progress and will need to be evaluated once the new Academy classes begin.

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3 BACKGROUND AND CONTEXT

Kroll's assessment of the APD Training Academy arose as part of the City of Austin's efforts to reimagine policing following a series of recent national and local events that shined a spotlight on police-community relations throughout the United States. As with many other U.S. cities that are consciously re-examining policing following the tragic killing of George Floyd and resulting protests this past summer, a series of alleged incidents and reports concerning the Austin Police Department over the past couple of years prompted the City, through Council resolutions and other calls for action, to more closely examine all aspects of policing, starting with how APD trains its officers. This section highlights some of the recent events, statistics, and reports that have provided the background and context for Kroll's review.

Reports of Racial Profiling and Bias. As outlined in City Council Resolution No. 20191205-066 ("Resolution 66"), adopted December 5, 2019, several internal and external reports have highlighted alleged racial disparities across various facets of APD's law enforcement operations that have disproportionately impacted communities of color. For example, according to state-mandated racial profiling reports from 2010 to 2018,[3] APD officers were more than twice as likely to search Black and Latino drivers than white drivers during traffic stops despite no greater likelihood of discovering contraband.

The Center for Policing Equity reported in 2016 that Black and Hispanic motorists made up a significantly higher share of discretionary stops than white motorists.[4] According to APD discretionary arrest data from 2017, APD officers made discretionary arrests of Black citizens at more than twice the rate of white or Latino residents; Blacks and Latinos were disproportionately arrested for driving with an invalid license compared to other races and ethnic groups, and Black residents were more than seven times as likely to be arrested for low-level marijuana offenses than white residents.[5] Moreover, in 2019, the department reportedly received eight formal complaints and 40 informal complaints of racial profiling, more than three times as many as in 2018.[6]

Alleged Racial Insensitivity by APD Officers. On October 30, 2019, the City received an anonymous complaint against former APD Assistant Chief Justin Newsom which alleged that, on several occasions over the past decade, Newsom used explicitly racist language in reference to President Barack Obama, former City Council Member Ora Houston, and former APD Assistant Chief Frank Dixon, among other persons of color. This complaint also alleged that then APD Chief Brian Manley and other high-level police officials knew of Newsom's use of racially derogatory language but did not act on the information.[7] While an independent investigation into these claims could not corroborate the specific alleged incidents ascribed to Newsom, it reported that "racist and sexist name-calling and use of derogatory terms associated with race and sex persists" within the department and "there is a very high level of fear of retaliation" for speaking

[3] https://www.austintexas.gov/page/racial-profiling-reports

[4] Phillip A. Goff et al., "The Science of Policing Equity: Measuring Fairness in the Austin Police Department" (New York, NY: Center for Policing Equity; Washington, D.C.: Urban Institute, 2016), https://policingequity.org/images/pdfs-doc/Austin_PDI_Report_2016_Release.pdf.

[5] https://www.austintexas.gov/edims/document.cfm?id=300349

[6] Bryce Newberry, "APD Racial Profiling Complaints More than Tripled from 2018 to 2019, Report Says," *KVUE*, February 28, 2020, https://www.kvue.com/article/news/local/apd-racial-profiling-complaints-more-than-tripled-from-2018-to-2019-report-says/269-eb531b4f-1970-4032-bdb3-2989772a798f.

[7] Russell Falcon, "Anonymous Complaint to City of Austin Alleges Former APD Assistant Chief Used 'n Word' to Refer to African-Americans," *KXAN Austin*, November 7, 2019, https://www.kxan.com/news/local/austin/austin-city-manager-approves-outside-investigation-into-complaints-against-former-apd-assistant-chief-department/.

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out against officers, as well as "quiet resistance from those interviewed in the form of evasiveness, misdirection and deflection."[8]

Moreover, in November 2019, a complaint received by the Office of Police Oversight alleged that a female Assistant Chief made disparaging remarks towards other officers, including one statement in which, referring to a Hispanic detective, the Assistant Chief allegedly said, "Maybe now more of your people [Hispanics] can get a job since college is no longer a requirement."[9] The complaint also alleged that officers rarely challenge their superiors on their misconduct "for fear of retaliation."[10]

Demographic Analysis. An *Austin American-Statesman* review of APD demographic data in 2016 found that, on average since 2005, approximately 69% of APD officers have been white, 20% Hispanic, 9% Black and 2% Asian/Pacific Islander.[11] This compared to 2015 U.S. census data, which showed that Austin's population at that time was approximately 48% white, 35% Hispanic, 7% Black, 7% Asian/Pacific Islander, and 3% other races and ethnicities.

According to the APD demographic data as of December 2020, the diversity among sworn personnel has not materially changed. Among all ranks, APD officers are 66.7% white, 21.8% Hispanic, 7.3% Black, and 3.0% Asian/Pacific Islander (compared to 2019 census data, which reflects that Austin's population is 48.3% white, 33.9% Hispanic, 7.8% Black, 7.7% Asian/Pacific Islander, and 3.5% multi-racial).[12] Moreover, as noted in the below chart, the higher ranks of the Department are far less diverse, as white officers constitute 70% of sergeants, 79.7% of lieutenants and 84.2% of commanders, while other racial and ethnic groups make up significantly lower percentages of the higher ranks.

		Ranks by Ethnicity [1]							Ranks by Gender [1]	
	# Personnel by Rank	White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Assistant Police Chief	6	50.0%	33.3%	16.7%	-	-	-	-	66.7%	33.3%
Police Commander	19	84.2%	5.3%	-	5.3%	5.3%	-	-	94.7%	5.3%
Police Lieutenant	69	79.7%	11.6%	5.8%	1.4%	-	1.4%	-	88.4%	11.6%
Police Sergeant	172	70.3%	15.1%	9.3%	1.7%	1.7%	1.7%	-	88.4%	11.6%
Police Corporal/Detective	401	68.1%	20.7%	8.0%	1.5%	0.7%	1.0%	-	87.8%	12.2%
Police Officer	1,104	64.6%	24.1%	7.3%	3.0%	0.5%	0.4%	0.1%	89.8%	10.2%
All Ranks	1,771	66.7%	21.8%	7.8%	2.5%	0.7%	0.7%	0.1%	89.1%	10.9%

NOTE: [1] Only Sworn Officers who appear to be currently allocated are included in this analysis.

Protocols and Training. The department has also been criticized in recent years for not properly emphasizing de-escalation in training protocols, leading to avoidable incidents involving excessive use of force. A 2016 "Use of Force Project" report revealed that, at least as of 2016, the APD did not require de-

[8] Lisa Tatum, "Austin Police Department Independent Investigation: Fact Investigation" (The Tatum Law Practice, April 2020), http://www.austintexas.gov/edims/pio/document.cfm?id=338889.

[9] https://joplin3-austin-gov-static.s3.amazonaws.com/production/media/documents/2019-1308_NFC_Stephenson.pdf

[10] *Ibid.*

[11] Katie Hall, "For Last Decade, Police Had More Whites, Fewer Hispanics than City Has," *Austin American-Statesman*, December 24, 2016, https://www.statesman.com/news/20161224/for-last-decade-police-had-more-whites-fewer-hispanics-than-city-has.

[12] https://www.census.gov/quickfacts/fact/table/austincitytexas/LND110210

escalation strategies, ban chokeholds or strangleholds, restrict shooting at moving vehicles, require exhausting all means before shooting, or require comprehensive reporting on use of force.[13] In an effort to combat this issue, a task force commissioned by the mayor released a report in 2017 recommending that the Academy include and specifically emphasize de-escalation training. As a result, in 2018, APD guidelines began placing greater emphasis on the use of de-escalation strategies.[14]

Past criticism has also been directed at the APD Training Academy, including complaints that the Academy promotes a toxic culture among recruits. For example, in 2018, a group of former cadets alleged that the Academy encouraged a culture of abuse towards citizens.[15] One former cadet alleged that instructors told cadets that they would "punch them in the face" if they said that the reason they wanted to be police officers was to help people. Another former cadet alleged that their "instructor repeatedly degraded the homeless and prostitutes, referring to them as 'cockroaches' and suggesting they 'find a transient' if [cadets] were bored and wanted a felony arrest." Several cadets also alleged they were injured during training as a result of abusive practices.

Allegations of Excessive Uses of Force. The Center for Policing Equity's 2016 report also found that APD was more likely to use force in African American and Latino communities, including severe force. These racial disparities persisted even after controlling for such factors as crime, education, homeownership, income, youth, unemployment, and poverty rates.

There have been many additional allegations of excessive uses of force against APD officers in recent years. For instance, two officers were charged criminally and terminated in 2018 for allegedly using a Taser weapon on an unarmed man who was in a kneeling position. Body camera footage captured the incident, but the officers were later found not guilty.[16] In addition, on April 24, 2020, Michael Ramos died after being shot by an APD officer as Ramos attempted to leave the scene of an encounter.[17] The officer has since been indicted on murder charges.[18] Finally, following the death of George Floyd in Minneapolis and the ensuing protests across the country that followed, APD was involved in three incidents in which non-violent protesters were struck by less-lethal police fire: a man in his 20s who was in critical condition, a teenage boy who was hit in the forehead, and a pregnant woman who was hit in the abdomen.[19]

Finally, a report released in September 2019 by the Human Rights Clinic of the University of Texas School of Law alleged that "Austin police are violating international human rights standards during mental health

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[13] Samuel Sinyangwe, "Examining the Role of Use of Force Policies in Ending Police Violence" (Police Use of Force Project, September, 2016), https://dx.doi.org/10.2139/ssrn.2841872.

[14] Andrea Ball and Tony Plohetski, "New Austin Police Policy Emphasizes Alternatives to Using Force," *Austin American-Statesman*, January 21, 2018, https://www.statesman.com/NEWS/20180121/New-Austin-police-policy-emphasizes-alternatives-to-using-force.

[15] Tony Plohetski, "Are Austin Police's Cadets Trained to Be 'Warriors' or 'Guardians'?," *KVUE*, April 24, 2018, https://www.kvue.com/article/news/local/are-austin-polices-cadets-trained-to-be-warriors-or-guardians/269-545190415.

[16] Russell Falcon, "APD Officers Fired after Previously Cleared of Excessive Force Charges," *KXAN Austin*, March 18, 2019, https://www.kxan.com/news/local/austin/apd-officers-fired-after-previously-cleared-of-excessive-force-charges/.

[17] Austin Sanders, "Activists Call for Firing of APD Leadership in Wake of Officer Involved Shooting," *The Austin Chronicle*, April 27, 2020, https://www.austinchronicle.com/daily/news/2020-04-27/activists-call-for-firing-of-apd-leadership-in-wake-of-officer-involved-shooting/.

[18] Tony Plohetski, "Austin Police Officer Christopher Taylor Charged with Murder in Michael Ramos Shooting," *Austin American-Statesman*, March 10, 2021. https://www.statesman.com/story/news/politics/2021/03/10/michael-ramos-austin-police-department-officer-christopher-taylor-indicted-murder/6940079002/

[19] Kevin Clark, "Austin Police Chief: Force Used against Protesters 'within Policy'," *KXAN Austin*, June 1, 2020, https://www.kxan.com/investigations/austin-police-chief-force-used-against-protesters-within-policy/.

calls", as "Austin has the highest per capita rate of police shootings during mental health calls of the 15 largest US cities."[20]

Resolution 66. On December 5, 2019, the Austin City Council directed the City Manager to initiate a comprehensive audit of APD's training of police cadets and ensure that cadet classes not be resumed until the assessment is completed.[21] Council directed a review of training materials, course content, protocols and procedures; how the department trains on cultural competency; and how the police academy addresses issues of bias, use of force, de-escalation, mental health responses, and protocols for non-English speaking and disabled persons, among other areas. Council further directed that the City Manager track and report on:

- APD training "related to reducing bias, increasing de-escalation, reducing racial disparities in use of force and severity of force, reducing racial disparities in discretionary searches, and improving communication with all individuals regardless of language, ethnicity, sexual orientation, gender identity or disability."
- Recruiting and ways to improve ethnic and gender diversity in cadet classes and whether certain practices and procedures, "including the use of disqualification codes for cadets, have a disparate effect or impact based on race, ethnicity, national origin, sex, religion, sexual orientation, or gender identity."
- Whether the overall balance of training favors efforts to reduce bias-based policing, increase de-escalation techniques, and improving culturally effective communication.
- Police academies elsewhere that have successfully implemented training programs to reduce force incidents and improve communications with diverse communities.
- Ensuring input from "community groups representing those disproportionately affected by policing," including people of color, non-English speaking residents, LGBTQ+ individuals, and persons with disabilities.

Although some of the above areas will be examined in the next phase of Kroll's evaluation of the APD, this report summarizes our findings and recommendations concerning the efficacy and effectiveness of APD's Training Academy in these and other areas.

[20] Robert Sims and Alyssa Goard, "Fatal Use of Force by APD during Mental Health Calls Violates Human Rights, Report Finds," *KXAN Austin*, September 25, 2019, https://www.kxan.com/news/fatal-use-of-force-by-apd-during-mental-health-calls-violates-human-rights-report-finds/.

[21] Audrey McGlinchy, "Austin Orders Sweeping Probe Of Alleged Racism, Bigotry Among Police, Including Social Media Audit," *KUT Radio, Austin's NPR Station*, December 5, 2019, https://www.kut.org/post/austin-orders-sweeping-probe-alleged-racism-bigotry-among-police-including-social-media-audit.

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4 BEST PRACTICES FOR POLICE ACADEMIES

Introduction

Of all the areas in policing, training has received the least amount of research attention. In 2015, President Obama's Task Force on 21st Century Policing (Task Force on 21st Century Policing) released a final report that identified six main pillars impacting the law enforcement profession: building trust and legitimacy, policy and oversight, technology and social media, community policing and crime reduction, officer training and education, and officer safety and wellness.[22] The Task Force report included over 150 recommendations and proposed action items for reform. While this work provided a promising roadmap for a path forward, it is important to note that many of the proposed recommendations were *not* evidence-based, in part because rigorous data collection and analysis to assess the utility of these reforms in real-world applications has not been prioritized.[23]

As a result of this lack of evidence, identifying appropriate recommendations for effective police training has been based less on research or empirical evaluations, and more on anecdotal evidence regarding best practices. Identifying these best practices is further challenged by the wide variation in training curricula, techniques, and content taught in police academies. Police training differs significantly across the United States, due in part to the decentralized nature of policing. In particular, police training varies dramatically in content, duration, and delivery for both basic and in-service training.

In general, few forms of police training have been subject to scientific review, but it does appear scholarship in this area is growing. Some forms of police training, including de-escalation training, crisis intervention teams, and procedural justice training have received recent empirical evaluations.[24] [25] [26] [27] These training programs have been correlated with several positive outcomes, such as reductions in use of force incidents, reductions in injuries, and increases in officer knowledge and skills. However, according to a survey conducted by the Police Executive Research Foundation (PERF), on average, officers do not spend a lot of time on these topics.[28] Specifically, academies designate most of their training hours on weapons and

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[22] President's Task Force on 21st Century Policing, "Final Report of the President's Task Force on 21st Century Policing" (Washington, DC: Office of Community Oriented Policing Services, 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[23] See, e.g., Cynthia Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing — Implementation and Research Priorities" (Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University; Alexandria, VA: International Association of Chiefs of Police, 2016), https://cebcp.org/wp-content/evidence-based-policing/IACP-GMU-Evidence-Assessment-Task-Force-FINAL.pdf.

[24] Michael T. Compton et al., "A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs," *Journal of the American Academy of Psychiatry and the Law Online*, 36, no. 1 (2008): pp. 47-55, https://pubmed.ncbi.nlm.nih.gov/18354123/.

[25] Robin Engel et al., "Examining the Impact of Integrating Communications, Assessment, and Tactics (ICAT) De-escalation Training for the Louisville Metro Police Department: Supplemental Findings" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020). https://www.theiacp.org/sites/default/files/Research%20Center/LMPD_ICAT%20Evaluation%20Initial%20Findings%20Report_FINAL%2009212020.pdf.

[26] Li Sian Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey? A Synthetic Control Analysis of Force Outcomes," *Criminology & Public Policy* (2021): pp. 1-35, https://doi.org/10.1111/1745-9133.12536.

[27] Daniel S. Nagin and Cody W. Telep, "Procedural Justice and Legal Compliance," *Annual Review of Law and Social Science*, 13 (2017): pp. 5-28, https://doi.org/10.1111/1745-9133.12499.

[28] Police Executive Research Forum, "Critical Issues in Policing Series: Re-Engineering Training on Police Use of Force" (Washington, DC: Police Executive Research Forum, 2015), https://www.policeforum.org/assets/reengineeringtraining1.pdf.

defensive tactics (more than 120 hours per year), and less on de-escalation, communication skills, or crisis intervention (roughly 26 hours per year). As such, many argue the focus of police training needs to be adjusted.[29]

Others recognize that police training is outdated and needs to include evidence-based, theory-informed curricula and delivery, which will ultimately improve learning and skill retention.[30] [31] While a comprehensive review of the police training literature base has found that there is little evidence around police training modalities and the existing literature is mostly hypothetical or based on other study populations,[32] several studies point towards the utility of repeated content exposure and practice[33] [34] or booster training programs.[35] The Council on Criminal Justice (CCJ) recommends that training content be delivered through a mixture of lecture, real world video examples, scenario-based role playing, and group discussion.[36] Overall, there is little systematic research on police training and scholars have long noted the need for more research on this topic.[37] [38] [39] [40]

After conducting an in-depth examination of the effectiveness of training in the United States, guidance regarding best practices has recently been summarized by the CCJ Task Force on Policing.[41] The CCJ's summary assessment examined the current practice and available research on training duration, content, and delivery, along with certification and national training standards. Through this process, the CCJ identified differences in what they termed a "resiliency-based" approach to training, which teaches officers to "recognize stress and regulate their responses to it", compared to the more typical "stress-oriented" military training approach, which involves "intensive physical demands and psychological pressure."[42] Based on their comprehensive review, they recommend that police training: (1) include more time teaching communication skills, de-escalation tactics, principles of procedural justice, and handling situations that officers are most likely to encounter, (2) adopt a resiliency-based approach rather than stress-oriented

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[29] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment" (Washington, DC: Council on Criminal Justice, Task Force on Policing, 2021), https://councilonci.foleon.com/policing/assessing-the-evidence/policy-assessments/.

[30] Michael Birzer, "Theory of Andragogy Applied to Police Training," *Policing: An International Journal of Police Strategies & Management*, 26, no. 1 (2003): pp. 29-42, https://doi.org/10.1108/13639510310460288.

[31] Rebecca Mugford, Shevaun Core, and Craig Bennell, "Improving Police Training from a Cognitive Load Perspective," *Policing: An International Journal of Police Strategies & Management*, 32, no. 2 (2013): pp. 312-337, https://doi.org/10.1108/13639511311329723.

[32] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing".

[33] Sean H. Kang, "Spaced Repetition Promotes Efficient and Effective Learning: Policy Implications for Instruction," *Policy Insights from the Behavioral and Brain Sciences*, 3, no. 1 (2016): pp. 12-19, https://doi.org/10.1177/2372732215624708.

[34] Mugford et al., "Improving Police Training from a Cognitive Load Perspective".

[35] Kyle McLean et al., "Randomized Controlled Trial of Social Interaction Police Training," *Criminology and Public Policy*, 13, no. 3 (2020): pp. 805-832, https://doi.org/10.1111/1745-9133.12506.

[36] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment".

[37] Dale R. Buchanan and Patricia A. Perry, "Attitudes of Police Recruits Towards Domestic Disturbances: An Evaluation of Family Crisis Intervention Training," *Journal of Criminal Justice*, 13, no. 6 (1985): pp. 561-572, https://doi.org/10.1016/0047-2352(85)90084-4.

[38] National Research Council, *Fairness and Effectiveness in Policing: The Evidence* (Washington, D.C.: The National Academies Press, 2004).

[39] Wesley Skogan, Maarten Van Craen, and Carl L. Hennessy, "Training Police for Procedural Justice," *Journal of Experimental Criminology*, 11, no. 3 (2015): pp. 319-334, https://doi.org/10.1007/s11292-014-9223-6.

[40] I. D. Winebrenner, *Family Crisis Intervention: The Erie County Project and the Role of the Family Crisis Patrolman* (Erie, PA: Bolte Center Press, 1976).

[41] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment".

[42] *Ibid*, 1.

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military training, (3) include periodic recertification beyond firearms training, and (4) develop national standards on training and certification.

In recent years, frequent analyses have also noted the perils of a "warrior" mentality in law enforcement and the need to shift to a more "guardian" approach. In essence, whereas the warrior police officer fights to control and conquer criminals, the guardian serves to protect the community. This metaphor might help explain why police agencies that ostensibly embrace the warrior mentality struggle with excessive uses of force, racial bias, and inappropriate responses to mental health crises; research and common sense dictate that departments ought to model their training principles closer to the guardian image than the warrior one. While this section will reference this dichotomy as it relates to police academy culture and take note of departments that have successfully embraced the guardian mindset, it will focus more specifically on the need to shift towards a resiliency-based approach.

Based primarily on the summary assessment from the CCJ and other trusted academic and editorial sources, the following review summarizes current police academy training best practices consistent with a resiliency-based or guardian-minded approach. The first section explains how paramilitary-style training and recruiting is believed to create a warrior-based culture, the negative consequences of this culture, and steps taken by departments across the country to change it. The second section then highlights some identified best practices of police academy curricula and policy, including an emphasis on de-escalation training, officer intervention, and a commitment to procedural justice. These features are evidenced by studies as well as examples of police forces that have incorporated them.

A Revised Police Academy Culture

The "warrior mentality" is a pervasive feature of modern law enforcement. Emerging fairly recently in the history of the United States, the prevailing mindset to treat crime as an enemy to be conquered and police like soldiers in that battle developed in response to the political 'wars' on drugs and terrorism.[43] This was particularly emboldened after September 11, 2001, when police became increasingly militarized in an effort to combat terrorism.[44]

Characterized by displaying courage in the face of life-threatening situations and fighting to "make it home at all costs," the warrior mentality is often admired in policing for enabling officers to forcefully confront individuals who pose an immediate risk to the public and themselves.[45] But these situations are rare in day-to-day police work; on average, departments devote only four percent of their time responding to violent crime.[46] [47] Instead, most time on the street is spent responding to medical emergencies, mental health crises, and traffic violations, situations that can escalate when officers respond with a warrior mindset, prepared to fight.[48] This is not to say that policing is not a dangerous profession. Compared to all other

[43] Jeff Adachi, "Police Militarization and the War on Citizens," *Human Rights Magazine*, February 1, 2017, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2016-17-vol-42/vol-42-no-1/police-militarization-and-the-war-on-citizens/.

[44] Arthur Rizer and Joseph Hartman, "How the War on Terror Has Militarized the Police," *The Atlantic* (Atlantic Media Company), November 7, 2011, https://www.theatlantic.com/national/archive/2011/11/how-the-war-on-terror-has-militarized-the-police/248047/.

[45] Amaury Murgado, "Developing a Warrior Mindset," *POLICE Magazine*, May 24, 2012, https://www.policemag.com/340761/developing-a-warrior-mindset.

[46] Jeff Asher and Ben Horwitz, "How Do the Police Actually Spend Their Time?," *The New York Times*, June 19, 2020, https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html.

[47] With variation across different municipalities.

[48] Jerry Ratcliffe, *Intelligence-Led Policing* (New York, NY: Routledge, 2016), referenced in Roge Karma, "We Train Police to Be Warriors - and Then Send Them out to Be Social Workers," *Vox*, July 31, 2020, https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training.

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occupations, police officers are four times more likely to die from an on-the-job injury.[49] Moreover, officers must be effectively trained to handle acute situations in which the public is put in danger from a violent criminal. But in the greater context of police work, seeing oneself primarily as a "warrior" is a precarious mindset. As noted by Seth Stoughton, a former officer and current professor at the University of South Carolina School of Law, when officers are taught to see citizens as potential threats to their life, they learn to fear them.[50] Thus, interactions between the police and the community often start with suspicion, vigilance, and caution, and positive encounters become infrequent, if not impossible. Furthermore, since officers are taught to physically control their space and react forcefully to noncompliance, they sometimes escalate otherwise peaceful encounters, making situations more dangerous for both sides.

Some experts have noted that military-style boot camps and "stress-oriented" training styles might foster this warrior mentality. The majority of police academy training in the United States is based on a military training approach that reinforces intensive physical demands, psychological pressure, and chain-of-command decision making. In these settings, instructors act like Marine drill sergeants, yelling orders and punishing recruits for minor infractions; recruits, in turn, must respond to orders with calls of 'Yes Sir!' or 'Yes Ma'am!'[51] Based on a 2013 survey of police academies, this stress oriented approach to training is used as the sole approach, or in combination with other styles, in over 80% of training academies; only about one in five (18%) academies reported using "non-stress" models for instruction.[52] While this training style may instill discipline and foster a battle-ready mentality, it may also demonstrate that it is acceptable to belittle those with less power.

Other components of the military model may also be inconsistent with the demands of modern policing. For instance, when officers graduate from the academy and start working on patrol, they must regularly make independent, discretionary choices that require critical thinking skills; military-style academies that emphasize strict adherence to authoritative rules over independent decision making may not adequately prepare officers to make the kinds of discretionary choices required on a day-to-day basis.[53] Moreover, the use of recruiting videos and web content that routinely feature high-action sequences and appeals to strength and violence over service can send the wrong message about the nature of policing in a progressive urban environment.[54] [55] [56]

A distinct but likewise ubiquitous problem with the culture in many academies is the lack of accountability among fellow officers; officers rarely report their peers for breaking rules or acting inappropriately. While this behavior is not enforced explicitly through policy, officers may learn early in the academy that if you

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[49] "Fact Sheet | Police Officers | August 2016," *U.S. Bureau of Labor Statistics*, August 2016, https://www.bls.gov/iif/oshwc/cfoi/police-officers-2014.htm.

[50] Seth Stoughton, "Law Enforcement's 'Warrior' Problem," *Harvard Law Review*, April 10, 2015, https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/.

[51] Rosa Brooks, "Stop Training Police Like They're Joining the Military," *The Atlantic* (Atlantic Media Company), August 12, 2020, https://www.theatlantic.com/ideas/archive/2020/06/police-academies-paramilitary/612859/.

[52] Brian A. Reaves, "State and Local Law Enforcement Training Academies 2013" *U.S. Department of Justice* (Office of Justice Programs, Bureau of Justice Statistics, 2016), https://www.bjs.gov/content/pub/pdf/slleta13.pdf.

[53] Sue Rahr and Stephen K. Rice, "From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals," *Harvard Kennedy School* (National Institute of Justice), April 2015, 6, https://www.ojp.gov/pdffiles1/nij/248654.pdf.

[54] "The Newport Beach Police Dept—Are You Qualified," *youtube.com*, November 14, 2008, https://www.youtube.com/watch?v=w_rKA6RQAVk.

[55] City of Palm Beach Gardens, "Palm Beach Gardens Police Department- Recruitment Video," *youtube.com*, May 26, 2020, https://www.youtube.com/watch?app=desktop&v=-Ftkjd19j5k.

[56] Andrew Wolfson, "Louisville Police Recruiting Video Lures 'Action-Movie Heroes,' Not Guardians, Experts Say," *Louisville Courier Journal*, January 23, 2021, https://www.courier-journal.com/story/news/local/2020/07/14/lmpd-recruiting-video-seeks-warriors-not-guardians-experts-wam/5390736002/.

report a peer, you will be ostracized.[57] This is sometimes referred to as "the blue wall of silence," and its pervasiveness in some police agencies' culture has been well documented.[58] [59] Officers bound to the duty to protect their own serve to reinforce the "us versus them" dynamic that exacerbates the warrior concept.

These factors create a problematic culture among police officers in many academies. While curriculum and policy changes in academies are necessary for improving police and community relations, reforming the academy culture based on stress-oriented training is an important first step. As discussed in the final report of the Task Force on 21st Century Policing, "any law enforcement organization can make great rules and policies that emphasize the guardian role, but if policies conflict with the existing culture, they will not be institutionalized and behavior will not change."[60]

Using a different training approach, police academies can establish a guardian-centric culture that focuses on service to the community rather than fighting crime, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, "resiliency-based" training has been shown to have several positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression.[61] Experts contend that this training style—which emphasizes strengthening officers' critical decision-making skills, communication, and emotional intelligence skills—is better associated with the skills and tactics necessary to handle complex situations that officers are likely to face in the field. As noted by the CCJ, "while there is no rigorous evidence that examines the current composition of policing training content in the United States compared to potential alternatives, there is some evidence that training which enhances human interaction skills may improve officer-civilian interactions and reduce use of force."[62]

The seminal model for the resiliency-based approach was pioneered by Sue Rahr, a former police chief and member of the Task Force on 21st Century Policing. Lead by Rahr, the Washington State Criminal Justice Training Commission (WSCJTC), which trains every recruit in Washington State, began fostering an improved training culture. Before 2012, the commission operated in the paramilitary-style, with officers required to stand at attention when addressed by their superiors and berated for failing to complete challenges meant to be impossible. Classroom visual aids also reinforced the military mindset, with handcuffs, nightsticks, and skulls and crossbones proudly displayed.[63]

To establish a more resiliency-based model, Rahr instituted several reforms. For example, rather than have recruits salute staff members, they are now required to initiate eye contact and conversation. In trophy cases and on walls, symbols glorifying the pride and danger of policing were replaced by visual aids representing the higher purpose and duty of the job, like the Constitution and Declaration of Independence. Frequent seminars, discussions, and exercises also encourage open communication and mindfulness. And

[57] Rich Schapiro, "'If You Snitch, Your Career Is Done': Former Baltimore Cop Says He Was Harassed, Labeled a 'Rat' after Attempt to Root out Police Brutality," *nydailynews.com*, January 14, 2015, https://www.nydailynews.com/news/crime/ex-baltimore-labeled-rat-police-brutality-claim-article-1.2077632.

[58] "Blue Wall of Silence: The Record," *The Marshall Project*, 2014, https://www.themarshallproject.org/records/605-blue-wall-of-silence.

[59] A clear example of this can be seen from a Department of Justice Report criticizing the culture of silence in the Chicago Police Department in 2017.

[60] Task Force on 21st Century Policing, "Final Report," 12.

[61] Rollin McCraty and Mike Atkinson, "Resilience Training Program Reduces Physiological and Psychological Stress in Police Officers," *Global Advances in Health and Medicine*,1, no. 5 (2012): pp. 44-66, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4890098/.

[62] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment," 4.

[63] Rahr and Rice, "From Warriors to Guardians".

while physical tests remain rigorous, instructors now encourage recruits to keep pushing, rather than berating or punishing them for failure.[64]

Additionally, while the paramilitary model tended to teach recruits through behavioral methods (punishing or rewarding success to reinforce proper conduct), the Washington State training commission now emphasizes the importance of adult learning methods, which modern psychological evidence suggests is more effective at teaching recruits.[65] In particular, the commission uses job-related case studies and student-led discussions to encourage the development of critical thinking skills and increased emotional intelligence.[66]

These new training methods, along with changes to academy curricula emphasizing de-escalation over tactical force, have transformed the commission into a model for resiliency-based training. Other organizations have likewise developed models and methods for improving academy culture. The Innovative Policing Program (IPP), designed by faculty at Georgetown Law School, aims to rethink the role of police in enhancing public safety. Through training seminars, lectures, and workshops, the program has worked with many large departments to educate and work with officers on issues relating to racial injustice. Along with the Metropolitan Police Department (MPD) in Washington D.C., IPP has run programs to teach recruits to discuss the role of police in perpetuating racial injustice and has brought in many police and criminal justice experts to speak about policing in today's world.[67] The MPD has also inserted civilians into some senior-academy positions, a move signaling a break from a military-style culture.[68] Several other organizations have also been on the forefront of addressing peer accountability among officers.

In combination with other reforms to the stress-oriented training model, these new approaches are recognized as an important step towards reforming police culture to become more consistent with respectful and constitutional policing.

Policy and Curriculum Best Practices

Rebuilding police culture in the image of a community-oriented, service provider is a significant first step in reforming academies, but concrete policy and curriculum changes are necessary as well. Specifically, academies must design their training programs to address and resolve concerns regarding police-community relations and racial bias. The following are major areas of focus in police reform efforts that are consistent with this recommended change in academy culture. While this list focuses on and describes several of the major topics of academy reform, it does not include all potential areas of best practices.

Procedural Justice

Distrust between the police and communities of color is a significant barrier to effective policing. Over the last 30 years, public trust and confidence in the police has decreased despite consistent reductions in

[64] Josh Sanburn, "The Woman Who Is Restoring Order to Law," *Time* , October 13, 2016, https://time.com/collection-post/4527347/2016-election-policing/.

[65] Michael Birzer, "Theory of Andragogy Applied to Police Training".

[66] Daniel M. Blumberg et al., "New Directions in Police Academy Training: A Call to Action," *International Journal of Environmental Research and Public Health* 16, no. 24 (December 6, 2019): 4941, p. 3, https://doi.org/10.3390/ijerph16244941.

[67] "Innovative Policing Program," *Innovative Policing Program*, https://www.law.georgetown.edu/innovative-policing-program/.

[68] Brooks, "Stop Training Police Like They're Joining the Military".

violent crime rates.[69] At the time of this writing, trust and confidence in policing has reached a modern-day low, where only 48% of Americans indicated they felt confidence in the police.[70]

When communities lack trust in the police and believe that officers treat them unfairly, they are less likely to work collaboratively with law enforcement and less likely to defer to law and authority.[71] Extensive research has shown that trust and confidence in law enforcement has a significant impact on public safety.[72] For communities to trust the police, they need to see them as legitimate. The principle of procedural justice focuses on the public's perception of the legitimacy of law enforcement.

Scholars and police experts agree that to gain legitimacy, the police need to follow four main principles: (1) allow people to explain themselves or state their case before judgment, (2) react to real evidence and enforce the law consistently, without bias, (3) treat citizens with dignity and respect, and (4) present themselves with physical cues that show compassion and trustworthiness rather than arrogance and disdain.[73] Studies have consistently shown that responding to each of these concerns contributes to an increase in the perceived legitimacy of the police in the community.[74]

Many departments have acknowledged the importance of procedural justice in modern policing and have begun to develop training programs to address it. These programs work to educate officers on the importance of procedural justice and provide them with the tools to address the four tenets of concern. Most notable in these efforts is the curriculum in procedural justice developed and implemented in 2012 within the Chicago Police Department (CPD)—with the assistance of academics Tom Tyler and Tracey Meares—that was attended by all CPD officers.[75] The initial "Legitimacy and Procedural Justice Training" course aimed to provide a clear understanding of the concept of procedural justice and the application of its principles to police work. After running the first session, the department designed a second phase of the program to reinforce the core concepts through scenario-based training and videos illustrating community-member perspectives.

An empirical evaluation of the CPD training program demonstrated some success. For example, a vast majority of officers (95%) reported positive attitudes after the training about resolving the concerns of the community, with these attitudes for the most part remaining in the long term.[76] Moreover, a 2020 study measuring the effects of the program on police use of force and complaints against officers found that the

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[69] Craig Fischer, ed., "Legitimacy and Procedural Justice: A New Element of Police Leadership" (Washington, DC: Police Executive Research Forum, March 2014), 1-2, https://www.policeforum.org/assets/docs/Free_Online_Documents/Leadership/legitimacy%20and%20procedural%20justice%20-%20a%20new%20element%20of%20police%20leadership.pdf.

[70] Megan Brenan, "Amid Pandemic, Confidence in Key U.S. Institutions Surges," *Gallup*, August, 2020, https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx.

[71] Fischer, "Legitimacy and Procedural Justice," 2.

[72] "Procedural Justice," *Truth & Justice*, https://trustandjustice.org/resources/intervention/procedural-justice. (see list of research links at bottom of webpage).

[73] Fischer, "Legitimacy and Procedural Justice," 9-10.

[74] Steven L. Blader and Tom R. Tyler, "A Four-Component Model of Procedural Justice: Defining the Meaning of a 'Fair' Process," *Personality and Social Psychology Bulletin* 29, no. 6 (June 1, 2003): pp. 747-758, https://doi.org/10.1177/0146167203029006007.

[75] Daniela Gilbert, Stewart Wakeling, and Vaughn Crandall, "Procedural Justice and Police Legitimacy: Using Training as a Foundation for Strengthening Community-Police Relationships," (Oakland, CA: California Partnership for Safe Communities, February 2015), https://bja.ojp.gov/sites/g/files/xyckuh186/files/bwc/pdfs/procedural-justice-and-police-legitimacy-paper-cpsc-feb-2015.pdf.

[76] *Ibid.*

timing of the training corresponded with a 10% reduction in complaints against officers and a 6.4% reduction in police use of force against civilians.[77]

Chicago's procedural justice training program has been adopted by many police agencies across the United States. Shortly after the program was introduced, representatives from the CPD ran workshops for several municipalities in California, including Oakland, Stockton, and Salinas, each of whom then designed their own programs to address the unique circumstances of their cities. For instance, with a particularly tense relationship between the Oakland Police Department and the city's community, Oakland included community leaders in planning their revised training program.[78] More departments are also continuing to build upon this program, including Birmingham, Fort Worth, Minneapolis, and Pittsburgh, for instance, while others like Seattle, have developed their own. Many of these programs have been equally successful; in Seattle, procedural justice training correlated to reductions in use of force incidents ranging from 16 to 50 percent.[79]

Experts have also called for departments to address procedural justice concerns internally—that is, to establish care for the four tenets of concern in procedural justice among department members themselves. For example, research has shown that when officers feel respected by their supervisors, they are more likely to support and comply with decisions.[80] Moreover, treating recruits in the academy with respect and dignity allows them to feel happier and have a greater sense of self-worth, which in turn provides them with a deeper connection to an agency's mission and values.[81]

Rahr's training commission espouses both external and internal procedural justice through a philosophy called LEED—Listen and Explain with Equity and Dignity. While not taught through a particular course, the LEED model teaches officers to always listen to people when they explain their story, explain what they are doing, use and express consideration for fairness when acting, and treat people with dignity.[82]

Community Policing Programs

A commitment to procedural justice goes hand-in-hand with community-oriented policing, or an emphasis on working cooperatively with people in neighborhoods to solve problems of public concern.[83] In doing so, police and the community garner a shared responsibility for maintaining order and public safety; community residents become more active in crime prevention, while police departments become more responsive to community concerns. Unlike traditional policing, which responds to calls for service once a crime is committed, community-oriented policing is focused on identifying underlying conditions for crime and

[77] George Wood, Tom R. Tyler, and Andrew V. Papachristos, "Procedural Justice Training Reduces Police Use of Force and Complaints against Officers," *Proceedings of the National Academy of Sciences* 117, no. 18, (2020): 9815-9821, https://doi.org/10.1073/pnas.1920671117.

[78] Gilbert et al., "Procedural Justice and Police Legitimacy," 10.

[79] Emily Owens et al., "Can You Build a Better Cop?," *Criminology & Public Policy* 17, no. 1 (2018): 41-87, https://doi.org/10.1111/1745-9133.12337.

[80] Nicole E. Haas, Maarten Van Craen, Wesley G. Skogan, and Diego M. Fleitas. "Explaining Officer Compliance: The Importance of Procedural Justice and Trust inside a Police Organization." *Criminology & Criminal Justice* 15, no. 4 (January 20, 2015): 442–63. https://doi.org/10.1177/1748895814566288.

[81] Charlene Moe and Melissa Bradley, "Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors," *The Beat*, April 2015, https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.

[82] Sue Rahr, John Diaz, and Joe Hawe, "The Four Pillars of Justice Based Policing" (Washington State Criminal Justice Training Commission, n.d.), https://www.rampagelaw.com/wp-content/uploads/sites/1500041/2020/02/05-Justice-Based-Policing-LEED.pdf.

[83] "Community Policing," *National Police Foundation*, https://www.policefoundation.org/projects-old/community-policing/.

collaborating with the public to address these conditions proactively.[84] This is often achieved through frequent meetings with community members to provide advice and encourage neighborhood watch groups, decentralization of authority and increased officer discretion, and cooperation with other public agencies and stakeholders.[85]

According to the Task Force on 21st Century Policing, community policing programs have been shown to reduce crime rates because they facilitate trust between the community and the police.[86] Moreover, since community policing programs often give officers greater discretion to respond to community concerns, evidence suggests these programs improve police job satisfaction.[87] Community policing has been cited as a major force behind decreasing crime rates, particularly in Boston, where every major category of crime has decreased in the last couple of decades.[88]

While an effective community policing program goes beyond academy training, proposals for reform that focus on the academy are promising. In the Task Force on 21st Century Policing, several recommendations for officer training and education focus on building community relations.[89] For example, the task force recommends that law enforcement agencies engage and involve community members in the training process, and that agencies ensure basic training includes lessons on improving social interactions. In addition, academics and police experts like Seth Stoughton have proposed initiatives that require recruits to initiate non-enforcement contacts with community members.[90] By engaging in meaningful conversations without being able to use enforcement tactics, such a program would allow would-be officers to connect with community members less formally, building ties and allowing for easier cooperation with the community.

De-escalation Training

Widely shared incidents of excessive use of force by police officers, particularly against minorities, have led to increased public scrutiny into use-of-force training policies in police academies. In addressing an officer's decision to use force, most academies teach a decision model described as the "use-of-force continuum" which advises officers to always react with more force and more powerful weapons than the individuals they confront.[91] However, as Sue Rahr explained, while some situations require officers to quickly take control with aggressive force, "in most situations, it's better if officers know how to de-escalate, calm things down, slow down the action."[92] As such, experts like Rahr argue that police academies ought to teach their cadets skills necessary for de-escalation.

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[84] William M. Rohe, Richard E. Adams, and Thomas A. Arcury, "Community Oriented Policing: What It Is - Why It Works - How to Get Started" (Chapel Hill, NC: The University of North Carolina Center for Urban and Regional Studies; The North Carolina Department of Crime Control and Public Safety, January 1997), https://www.ojp.gov/pdffiles1/Digitization/169113NCJRS.pdf.

[85] "Examples of Effective Community Engagement," *Ohio Collaborative Community-Police Advisory Board*, https://ericmembers.org/wp-content/uploads/2018/05/Examples-Community-Police-Engagement_Ohio.pdf

[86] Task Force on 21st Century Policing, "Final Report," 3.

[87] *Ibid*, 41.

[88] Thejasa Jayachandran, "Community Policing: A Success Story?: Rise of Community Policing," *Pioneer Institute*, August, 10, 2016, https://pioneerinstitute.org/better_government/community-policing-success-story/.

[89] Task Force on 21st Century Policing, "Final Report".

[90] Seth Stoughton, "Law Enforcement's 'Warrior' Problem".

[91] Isidoro Rodriguez, TCR Staff, and Andrea Cipriano, "Police in America: Warriors or Peacemakers?," *The Crime Report*, June 18, 2018, https://thecrimereport.org/2018/06/18/police-in-america-warriors-or-peacemakers/.

[92] Kimberly Kindy, "These Police Recruits Are Being Trained to Be Guardians, Not Warriors," *The Washington Post*, December 10, 2015, https://www.washingtonpost.com/sf/investigative/2015/12/10/new-style-of-police-training-aims-to-produce-guardians-not-warriors/.

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Despite support for de-escalation training from Rahr and other experts, though, we do not know precisely the impact this type of training has on police-citizen interactions.[93] [94] Even the term "de-escalation" lacks an evidence-based definition in the policing field.[95] [96] Broadly speaking, nursing and psychiatry fields refer to de-escalation as a process used to prevent, reduce, or manage aggressive behavior during an interaction between two or more persons.[97] The *National Consensus Policy and Discussion Paper on Use of Force,* released in October 2017, was one of the first documents to define de-escalation as it relates to policing. They proposed the following definition:

> *Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.*[98]

Rather than a description of the tactics or process, others have recommended a more succinct definition. For example, based on feedback gathered during focus groups with police officers, Todak and White define de-escalation as "bringing a situation or citizen in crisis back to a calm state, using the least amount of force possible."[99]

Proponents of de-escalation training within law enforcement agencies argue that this type of training provides officers with enhanced skills to resolve conflicts in highly confrontational situations without the use of force.[100] In turn, an officer's ability to defuse these encounters enhances both officer and civilian safety in police-citizen interactions. Critics of de-escalation training, however, suggest these tactics contradict traditional policing operational responses, increasing officers' risk for injury by encouraging slow responses to potentially volatile situations.[101] [102] Unfortunately, available research on the impacts of de-escalation training provides limited insight on arguments pertaining to the efficacy of this training. Like most training programs implemented within law enforcement, de-escalation training has not been the subject of

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[93] Robin S. Engel, Hannah D. McManus, and Tamara D. Herold, "Does De-escalation Training work? A Systematic Review and Call for Evidence in Police Use of Force Reform," *Criminology & Public Policy*, 19, no. 3 (2020): pp. 721-759, https://doi.org/10.1111/1745-9133.12467.

[94] Robin Engel, Hannah D. McManus, and Gabrielle T. Isaza, "Moving Beyond "Best Practice": Experiences in Police Reform and a Call for Evidence to Reduce Officer-involved Shootings," *ANNALS of the American Academy*, 687, no.1 (2020): pp. 147-165, https://doi.org/10.1177/0002716219889328.

[95] Engel et al., "Does de-escalation training work?".

[96] Natalie Todak and Lois James, "A systematic social observation study of police de-escalation tactics," *Police Quarterly*, 21, no. 4 (2018): pp. 509-543, https://doi.org/10.1177/1098611118784007.

[97] Engel et al., "Does de-escalation training work?".

[98] International Association of Chiefs of Police, "National Consensus Discussion Paper on Use of Force and Consensus Policy," (Alexandria, VA: Contributing Organizations, 2017), https://www.thelacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force-and-consensus-policy.

[99] Natalie Todak and Michael D. White, "Expert officer perceptions of de-escalation in policing," *Policing: An International Journal*. 42, no. 5 (2019): 842, https://doi.org/10.1108/PIJPSM-12-2018-0185.

[100] Janet R. Olivia, Rhiannon Morgan, and Michael T. Compton, "A Practical Overview of De-Escalation Skills in Law Enforcement: Helping Individuals In Crisis While Reducing Police Liability and Injury," *Journal of Police Negotiations*, 10, no. 1: 15-29 (2010), https://doi.org/10.1080/15332581003785421.

[101] David Blake, "Does de-escalation endanger police officers or save lives?" *PoliceOne*, 2017, https://www.policeone.com/Officer-Safety/articles/455355006-Does-de-escalation-endanger-police-officers-or-save-lives/.

[102] Tom Jackman, "De-escalation training to reduce police shootings facing mixed reviews at launch," *The Washington Post*, 2016, https://www.washingtonpost.com/local/public-safety/de-escalation-training-to-reduce-police-shootings-facing-mixed-reviews-at-launch/2016/10/14/d6d96c74-9159-11e6-9c85-ac42097b8cc0_story.html.

substantial empirical evaluation.[103] [104] As a result, little is known regarding the development, delivery, and impact of this type of training.

The most comprehensive study to date, however, shows promising results for a de-escalation training program called Integrating Communications Assessment and Tactics (ICAT). Developed as a national model for de-escalation training by PERF and hundreds of police professionals across the United States, the ICAT program aims to "provide first responding police officers with the tools, skills, and options they need to successfully and safely defuse a range of critical incidents."[105] Specially designed to account for situations involving unarmed individuals experiencing mental health or other crises (situations that can lead to fatal encounters if the police respond aggressively),[106] ICAT encourages officers to create distance, use physical cover as protection, buy time speaking rather than commanding, and in general slow things down.[107]

Implemented with the Louisville Metro Police Department (LMPD), researchers found that ICAT demonstrated a statistically significant 28% reduction in officer use of force, 26% reduction in citizen injuries, and 38% reduction in officer injuries that corresponded directly with the training. This study, conducted by Robin Engel and her colleagues at the University of Cincinnati, represents the first large-scale, rigorous empirical evaluation of police de-escalation training that has demonstrated a significant reduction in police use of force. Further, the ICAT training specifically is the only de-escalation training curricula with clear and strong evidence regarding its impact on police behavior.[108]

Already adopted by almost 100 departments in the country, including Louisville, Camden, and Baltimore, the program has proven successful. As described above, evaluation of the program's implementation in Louisville found that ICAT led to significant reductions in use of force incidents, officer injury, and citizen injury.[109] In Camden, the ICAT program, in combination with a variety of other new policies and training, led to excessive force complaints dropping from 65 in 2014 to 12 in 2017, and overall crime rates dropping 23 percent since 2013.[110] A second study of ICAT in Camden demonstrated a 40% reduction in serious force incidents for the police department, providing further optimism regarding de-escalation training and policies.[111]

Other anecdotal accounts have reported reductions in officer use of force after implementation of enhanced de-escalation training. In San Francisco, for instance, a new training program corresponded with a 24 percent decrease the following year.[112] In Newark, no officer fired a single shot while on duty in 2020 to

[103] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing".

[104] National Research Council, "Fairness and Effectiveness in Policing".

[105] "ICAT: Integrating Communications, Assessment, and Tactics," *Police Executive Research Forum*, https://www.policeforum.org/icat.

[106] Heather Carroll, "Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters," *Treatment Advocacy Center*, December 2015, https://www.treatmentadvocacycenter.org/overlooked-in-the-undercounted.

[107] Rodriguez et al., "Police in America".

[108] Engel et al., "Examining the Impact of ICAT".

[109] *Ibid.*

[110] Rodriguez et al., "Police in America".

[111] Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey?".

[112] Dan Morse and Tom Jackman, "Police De-Escalation Training Gaining Renewed Clout as Law Enforcement Seeks to Reduce Killings," *The Washington Post*, October 27, 2020, https://www.washingtonpost.com/local/deescalation-training-police/2020/10/27/3a345830-14a8-11eb-ad6f-36c93e6e94fb_story.html.

which the department credits their de-escalation program.[113] While more studies should be conducted to determine the precise causal effects of these training programs, these results provide initial promising evidence that an emphasis on de-escalation is safer for both the police and the community.

Crisis-Intervention Team (CIT) Training

Public attention and acceptance of mental illness have grown in recent years.[114] Of particular concern for activists is the relationship between police and individuals with mental illness. Since 2015, almost a quarter of fatal shootings by police officers involve persons with mental illness.[115] Responding to growing concerns over people with mental illness traumatized and even dying in police custody, in 1988, the National Alliance on Mental Illness (NAMI) provided funding for a community task force in Memphis called the Crisis Intervention Team (CIT) to oversee a training program for Memphis Police Department Officers.[116] The training was designed to keep people with mental illness safe during a mental health crisis and teach officers to connect those in crisis with proper treatment services, rather than conducting an arrest, when possible. Today, there are over 3,000 CIT programs across the world.[117] These programs are community-based and rely on partnerships between police organizations, mental health advocates, and people living with mental health issues.

Once a department implements a CIT program, officers who volunteer and pass screening can receive 40 hours of classroom training to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis. Once trained, these officers serve as specialized responders to mental health crisis calls. The goal of the CIT model is to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges.

The Memphis CIT model is one of several training programs designed to facilitate better police responses to behavioral and mental health crises.[118] For example, the co-responder team program pairs trained police officers with mental health professionals to respond to situations involving an individual experiencing a behavioral health crisis.[119] Law Enforcement Assisted Diversion (LEAD) is a pre-booking diversion model that serves to divert individuals charged with minor offenses to community-based mental health or addiction services.[120] Case management team models partner police and behavioral health professionals in the identification, engagement, and case management of individuals with serious mental illness or disability.[121]

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[113] News 12 Staff, "Newark Police: No Officer Fired a Single Shot in 2020, Thanks to De-Escalation Program," *News 12 - The Bronx*, December 30, 2020, https://bronx.news12.com/newark-police-no-officer-fired-a-single-shot-in-2020-thanks-to-de-escalation-program.

[114] Sophie Bethune, "Survey: Americans Becoming More Open About Mental Health," *American Psychological Association*, May 1, 2019, *https://www.apa.org/news/press/releases/2019/05/mental-health-survey*.

[115] *Julie Tate et al., "Fatal Force," The Washington Post, March 28, 2021, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?itid=lk_inline_manual_3.*

[116] Laura Usher et al., "Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises" (Memphis, TN: CIT International, 2019), https://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20Guide%20Interactive%20Web%20Version%20Final.pdf.

[117] *Ibid*, 2.

[118] https://www.thelacp.org/projects/academic-training-to-inform-police-responses

[119] Hannah McManus et al., "Assessing the Impact of Co-Responder Team Programs: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[120] Hannah McManus et al., "Assessing the Impact of Law Enforcement Assisted Diversion (LEAD): A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[121] Hannah McManus et al., "Law Enforcement-Based Case Management Services: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

And mobile crisis team models (MCTs) are a mental-health based response in which an interdisciplinary team of mental health professionals rapidly respond to behavioral health crises.[122] While CIT has arguably been the most popular behavioral crisis response model (and is currently employed by APD), each one described provides its own unique benefits and challenges, and should all be considered as viable options for police departments.

Since the inception of CIT, there have been several evidence-based evaluations of the training's effectiveness. While the literature shows some mixed results particularly concerning the precise effects of training on favorable community outcomes like reduced incarceration, there is encouraging evidence of positive effects of CIT training on officer behavior, attitudes, and knowledge of relevant issues.[123] For example, CIT training improves officer knowledge surrounding behavioral health-related challenges and increases officer confidence in their ability to successfully intervene in a crisis incident.[124] [125] [126] [127] Moreover, research has shown that for CIT-trained officers, conducting a referral or transport was more likely and conducting an arrest less likely than for officers without training.[128]

While CIT training has proved effective in several areas of concern, it is, by itself, an insufficient solution to the broader problem of police responses to mental health calls. According to the executive director of CIT International, Ron Bruno, some departments see the 40-hour CIT training as merely a box to check off, and they do not take the appropriate steps to integrate the program into the wider mental health care system.[129] Ideally, Bruno argues, efforts need to be focused on increasing broader community resources for individuals with mental illness to allow responses to crises that do not involve law enforcement; merely training police officers does not directly address this issue. Departments should continue to build relationships and cooperate with local mental health services as well as supplement CIT training with additional programs to reduce stigma.[130] While CIT training provides officers with more tools to do their jobs safely and effectively and can improve their knowledge of mental illness and community resources, additional programs may be warranted as well.

Peer Intervention Training

The science on why good people fail to act when they ethically should act has been the subject of scientific inquiry for decades, originating from discussions on inaction during the holocaust.[131] It has been applied in

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[122] Hannah McManus et al., "Assessing the Impact of Mobile Crisis Teams: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[123] Amy C. Watson, Michael T. Compton, and Jeffery N. Draine, "The Crisis Intervention Team (CIT) Model: An Evidence-based Policing Practice?" *Behavioral Sciences & the Law*, 35, no. 5-6 (2017): pp. 431-441, https://doi.org/10.1002/bsl.2304.

[124] *Ibid.*

[125] Randy Borum et al., "Police Perspectives on Responding to Mentally Ill People in Crisis: Perceptions of Program Effectiveness," *Behavioral Sciences & the Law*, 16, no. 4 (1988): pp.393-405, https://doi.org/10.1002/(SICI)1099-0798(199823)16:4<393::AID-BSL317>3.0.CO;2-4.

[126] Michael T. Compton et al., "Crisis Intervention Team Training: Changes in Knowledge, Attitudes, and Stigma Related to Schizophrenia," *Psychiatric Services*, 57, no. 8 (2006): pp. 1199-1202, https://doi.org/10.1176/ps.2006.57.8.1199.

[127] Michael T. Compton et al., "A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs".

[128] Michael T. Compton et al., "The Police-Based Crisis Intervention Team (CIT) Model: II. Effects on Level of Force and Resolution, Referral, and Arrest," *Psychiatric Services*, 65, no. 4 (2014): pp. 523-529, https://doi.org/10.1176/appi.ps.201300108.

[129] Eric Westervelt, "Mental Health and Police Violence: How Crisis Intervention Teams are Failing," *National Public Radio*, September 18, 2020, https://www.npr.org/2020/09/18/913229469/mental-health-and-police-violence-how-crisis-intervention-teams-are-failing.

[130] Cassidy B. Haigh, Anne L. Kringen, and Jonathan A. Kringen, "Mental Illness Stigma: Limitations of Crisis Intervention Team Training," *Criminal Justice Policy Review*, 31, no. 1 (2018): pp. 42-57, https://doi.org/10.1177/0887403418804871.

[131] Ervin Staub, *The Roots of Goodness and Resistance to Evil: Inclusive Caring, Moral Courage, Altruism Born of Suffering, Active Bystandership, and Heroism* (Oxford, England: Oxford University Press, 2015).

other areas such as drunk driving,[132] airlines,[133] medical sciences,[134] prevention of sexual assault,[135] and prevention of genocide.[136] Clearly, the principles of bystandership and peer intervention are not new, but their application to the policing practice has been limited.[137] Given the scarcity of effective peer intervention into officer misconduct, many have called for programs specifically designed for this purpose.

One of the first peer intervention training programs, *Ethical Policing Is Courageous* (EPIC), was designed to prevent and mitigate police officer mistakes and misconduct. First developed and implemented by the New Orleans Police Department (NOPD) pursuant to a federal consent decree in 2016, EPIC is built upon the social science research regarding "bystandership." A bystander is any witness who is in a position to understand what is occurring and can take action; a *passive* bystander is one who fails to intervene when the circumstances warrant action and an *active* bystander is one who does.[138] EPIC aims to increase active bystandership to promote peer intervention by officers who will intervene in another's action to prevent or reduce misconduct or mistakes, particularly in use-of-force situations.

The NOPD developed this department-wide program due to the explicitly stated requirement of developing a use-of-force training that emphasized ethical decision making and peer intervention from their Consent Decree with the US Department of Justice.[139] EPIC teaches officers how to intervene safely and effectively with learnable skills. There are several elements of EPIC training that are based on research. For example, EPIC emphasizes the power of active bystanders[140] as well as the inhibitors of action,[141] based on research from social psychology. Scholars note that for a program like EPIC to succeed in a police department, a culture change is required through the involvement and support of superior officers.[142]

EPIC has not yet been subject to formal evaluation, but the NOPD reported preliminary program success through significant reductions in citizen complaints[143] and several officer anecdotal accounts of program

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[132] Nancy Lee and Philip Kotler, *Social Marketing Changing Behaviors for Good* (Los Angeles, CA: Sage Publications, 2008).

[133] Robert O. Besco, "To Intervene or not to Intervene? The Co-pilot's Catch 22," *Proceedings of the Human Factors and Ergonomics Society Annual* Meeting, 39, no. 1 (1995): pp. 20-24, https://doi.org/10.1177/154193129503900106.

[134] Stephanie Shapiro, "A Renewed Call to 'do no harm'," *John Hopkins Medicine DOME*, 62, no. 8 (2011): 6, http://www.hopkinsmedicine.org/news/publications/dome/issues.

[135] Shawn Burn, "A Situational Model of Sexual Assault Prevention Through Bystander Intervention," *Sex Roles*, 60, no. 11 (2009): pp. 779-792, https://doi.org/10.1007/s11199-008-9581-5.

[136] Ervin Staub et al., "Healing, Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killing: An Intervention and its Experimental Evaluation in Rwanda. *Journal of Social and Clinical Psychology*, 24, no. 3 (2005): pp. 297–334, https://doi.org/10.1521/jscp.24.3.297.65617.

[137] Jonathan Aronie and Christy E. Lopez, "Keeping Each Other Safe: An Assessment of the Use of Peer Intervention Programs to Prevent Police Officer Mistakes and Misconduct, Using New Orleans' EPIC Program as a Potential National Model. *Police Quarterly*, 20, no. 3 (2017): 295-321, https://doi.org/10.1177/1098611117710443.

[138] Ervin Staub, *Training active bystanders: A curriculum for school and community* (Orange MA: Quabbin Mediation, Inc., 2007), http://people.umass.edu/estaub/TAB_curricuulum.pdf.

[139] "Consent Decree Regarding the New Orleans Police Department," *Nola.gov*, 2012, https://www.nola.gov/nopd/nopd-consent-decree/.

[140] Ervin Staub, "Helping a Distressed Person: Social, Personality, and Stimulus Determinants," *Advances in experimental social psychology*, 7 (1974): pp. 293–342, (New York, NY: Academic Press), https://doi.org/10.1016/S0065-2601(08)60040-4.

[141] Bibb Latane and John Darley, *The Unresponsive Bystander: Why Doesn't He Help?* (New York, NY: Appleton-Crofts, 1970).

[142] Ervin Staub, "Witnesses/bystanders: The tragic fruits of passivity, the power of bystanders, and promoting active bystandership in children, adults, and groups," *Journal of Social Issues*, 75, no. 4 (2019):pp. 1262-1293, https://doi.org/10.1111/josi.12351.

[143] Tom Jackman, "New Orleans police pioneer new way to stop misconduct, remove 'blue wall of silence'," *The Washington Post*, January 24, 2019, https://www.washingtonpost.com/crime-law/2019/01/24/new-orleans-police-pioneer-new-way-stop-misconduct-remove-blue-wall-silence/. ("Citizen complaints have dropped significantly, from 850 in 2016 to 734 in both 2017 and 2018, they said.")

success in the field.[144] Several agencies have taken steps to adopt a similar program, and command staff from nearly 100 police departments (including Austin Police Department) have traveled to New Orleans to learn more about EPIC.

Building on EPIC, the NOPD and the Innovative Policing Department developed another training resource called Project ABLE (Active Bystandership for Law Enforcement) that "prepare officers to successfully intervene to prevent harm and to create a law enforcement culture that supports peer intervention."[145] Project ABLE offers training, technical assistance, and research available at no cost for all departments in the nation to teach the importance of and allow for the facilitation of officer intervention. Several large departments, including Baltimore (pursuant to a federal consent decree), Philadelphia, Boston, and the WSCJTC are already participating.[146] The ABLE training is now being offered in over 100 police agencies across the country and will become part of the state-mandated training for all police agencies in New Jersey.

It is important to note that, while these programs have shown promise and are anecdotally effective, they have not been empirically examined. While they are based on strong conceptual frameworks, it is unknown if they achieve their intended effects of: (1) changing police culture, and (2) reducing excessive use of force or other problematic behaviors.

Implicit Bias Training

Implicit bias refers to an unconscious prejudice that people may develop due to differential life experiences.[147] In contrast to explicit bias, which is akin to traditional "racism," all humans are subject to some form of unconscious bias that may influence perceptions and behaviors, resulting in discriminatory decision-making.[148] The "automatic association people make between groups of people and stereotypes about those groups," is a well-studied psychological phenomenon.[149] [150] Long noted as a barrier to fair policing, implicit bias provides one potential explanation for the well-documented racial and ethnic disparities that exist across a range of policing outcomes, including traffic and pedestrian stops, arrests, and use of force across the country.[151]

Due to the high rates of minority citizen contact with police, the impact of implicit bias in policing could be especially profound. Indeed, the existence of implicit bias in officers specifically has been demonstrated in research.[152] The Task Force on 21st Century Policing specifically acknowledged implicit bias and its role in producing disparities in outcomes, calling for police training to reduce the impact of such biases. Based

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[144] http://epic.nola.gov/home/

[145] "Active Bystandership for Law Enforcement (ABLE)," *Active Bystandership for Law Enforcement (ABLE)*, https://www.law.georgetown.edu/innovative-policing-program/active-bystandership-for-law-enforcement/.

[146] "Police Departments Across Country Embrace Active Bystandership to Prevent Harm," *Business Wire*, September 29, 2020, https://www.businesswire.com/news/home/20200929005159/en/Police-Departments-Across-Country-Embrace-Active-Bystandership-to-Prevent-Harm.

[147] Patricia Devine, "Stereotypes and Prejudice: Their Automatic and Controlled Components," *Journal of Personality and Social Psychology*, 82, no. 1 (1989): 62, https://doi.org/10.1037//0022-3514.56.1.5.

[148] John F. Dovidio, Kerry Kawakami, and Samuel L. Gaertner, "Implicit and Explicit Prejudice and Interracial Interaction," *Journal of Personality and Social Psychology*, 82, no. 1 (2002): pp. 62-68, https://doi.org/10.1037/0022-3514.82.1.62.

[149] "Implicit Bias," *Truth & Justice*, https://trustandjustice.org/resources/intervention/implicit-bias.

[150] Kirsten Weir, "Policing in Black & White," *American Psychological Association*, December 2016, https://www.apa.org/monitor/2016/12/cover-policing.

[151] Lorie A. Fridell, *Producing Bias-Free Policing: A Science-based Approach* (New York, NY: Springer, 2017).

[152] Keith B. Payne, "Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon," *Journal of Personality and Social Psychology*, 81, no. 2 (2001): 181, https://doi.org/10.1037/0022-3514.81.2.181.

upon a large body of psychological research demonstrating that biases can be managed,[153] [154] interventions typically begin by educating individuals regarding the existence of implicit bias and, subsequently, teaching various skills to reduce and manage these biases.[155]

Despite the accumulating evidence from other disciplines demonstrating a mixed picture regarding the impact of implicit bias training on changes in behavior,[156] [157] there remains a critical need to examine implicit bias training for police. One literature review conducted in 2018 found no experimental evaluations of implicit bias training for police officers.[158]

Since this review, only one study—involving the New York City Police Department (NYPD)—has been conducted that specifically examines the impact of an implicit bias training program (Fair and Impartial Policing) on police attitudes and behavior. Using a randomized control trial design, these researchers found increases in officers' reported knowledge about implicit bias, and modest changes in officers' attitudes that correlated with training delivery.[159] For example, 70 percent of participants gained a better understanding of implicit bias, while more than two-thirds learned new strategies that they expected to apply to their work.[160] Moreover, new psychological research has shown promising avenues to reduce implicit bias, including the facilitation of intergroup contact and displaying counter-stereotypic exemplars.[161] However, the NYPD study demonstrated no detectable changes in reported racial and ethnic disparities in stops, frisks, searches, use of force, arrests, summons, or citizen complaints after the training was implemented.

Based on the lack of research on the effectiveness of implicit bias training, the CCJ concluded: (1) additional research is needed to determine whether implicit bias training programs that differ in content and dosage yield better results, and (2) lowering the frequency of high-discretion police stops may be more likely to reduce biased policing than offering implicit bias training.[162] Of note, however, is that the CCJ did not consider the potential (unknown) positive impact that implicit bias training may have on changing the culture of policing. Increasing trainees' general knowledge and understanding regarding implicit bias should remain an important goal of police academies, especially to support the transformation from a stress-oriented to resiliency-based approach, and its corresponding impact on academy culture.

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[153] Margo J. Monteith, Steven A. Arthur, and Sara M. Flynn, "Self-regulation and Bias," *Group Processes & Intergroup Relations*, 13, no. 2 (2010): pp. 183-200, https://doi.org/10.1177/1368430209353633.

[154] Thomas F. Pettigrew and Linda R. Tropp, "Allport's Intergroup Contact Hypothesis: Its History and Influence," *On the Nature of Prejudice: Fifty Years After Allport* (2005): pp. 262-277, https://doi.org/10.1002/9780470773963.ch16.

[155] Fridell, "Producing Bias-free Policing".

[156] Patrick S. Forscher et al., "A Meta-analysis of Procedures to Change Implicit Measures," *Journal of Personality and Social Psychology*, 117, no. 3 (2019): pp. 522-559, https://doi.org/10.1037/pspa0000160.

[157] Doyin Atewologun, Tinu Comish, and Fatima Tresh, "Unconscious Bias Training: An Assessment of the Evidence for Effectiveness" (Manchester United Kingdom: Equality and Human Rights Commission, 2018), https://www.equalityhumanrights.com/sites/default/files/research-report-113-unconcious-bais-training-an-assessment-of-the-evidence-for-effectiveness-pdf.pdf.

[158] Renee J. Mitchell and Lois James, "Addressing the Elephant in the Room: The Need to Evaluate Implicit Bias Training Effectiveness for Improving Fairness in Police Officer Decision-making," *Police Chief Magazine*, 2018, https://www.policechiefmagazine.org/addressing-the-elephant-in-the-room/.

[159] Robert Worden et al., "The Impacts of Implicit Bias Awareness Training in the NYPD" (International Association of Chiefs of Police/University of Cincinnati Center for Police Research and Policy, July 2020), https://www.theiacp.org/sites/default/files/2020-09/NYPD%20Implicit%20Bias%20Report.pdf.

[160] *Ibid.*

[161] Katherine B. Spencer, Amanda K. Charbonneau, and Jack Glaser, "Implicit Bias and Policing," *Social and Personality Psychology Compass* 10, no. 1 (2016): 50-63, https://doi.org/10.1111/spc3.12210.

[162] Center for Criminal Justice, "Effectiveness of Police Training".

Officer Wellness

Academies often stress the importance of maintaining proper physical health through fitness training and proper nutrition. Physical fitness can reduce an officer's risk of injury in the line of duty and can allow officers to perform their jobs more effectively. As a result, many departments impose strict requirements for physical fitness in the academy. However, just as important to an officer's safety and effectiveness in their job is their overall wellness and mental health. Policing can take a significant toll on mental health: officers must remain vigilant while working long hours, they are often exposed to crisis and tragedy, and they frequently encounter verbal abuse and scrutiny. Officers are therefore likely to experience stress, anxiety, and other mental states. This can negatively affect their judgment under pressure and make it harder for them to connect with others, thereby reducing their effectiveness in serving the community.[163]

In addition, when stress from the job accumulates, it can lead officers to burnout, depression, and even suicide; officers are 2.4 times more likely to die by suicide than homicide, while they are almost twice as likely as the general public to experience suicidal ideations.[164] More departments are recognizing this and are beginning to develop programs in and outside the academy to address overall wellbeing, rather than just physical wellbeing. While doing so allows officers to be more effective at their jobs and keeps them safer, it also acknowledges that officers are not emotionless soldiers, but are ordinary human beings who deserve care and support in their jobs.

One particularly successful program is the San Diego Police Department's Wellness Unit, where a more comprehensive approach to wellness was developed in response to several tragic incidents involving mentally unstable officers. With the introduction of the Wellness Unit, officer-wellness services like peer support, psychologists, and stress management training were centralized, and a robust culture of wellness was created. The program attempts to normalize wellness services by training recruits early in the academy on emotional survival and providing accessible resources to all new officers. The unit also offers a two-day effective interactions training course and various workshops to respond to troubling emerging trends in wellness. A PERF review of the wellness program in 2017 found that 70 percent of officers in the program felt that the stigma associated with asking for help was decreasing, while 79 percent of officers said they would feel comfortable walking into the wellness center—good evidence that the program is successful in creating a culture of wellness.[165] [166]

Nationally, the Bureau of Justice Assistance (BJA) offers the *Officer Robert Wilson III Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability (VALOR) Initiative*, which provides training programs and resources to promote immediate and long-term officer safety, wellness, and resilience.[167] While they offer several different programs, the *Law Enforcement Agency and Resilience Training Program* has been subject to recent evaluation.[168] This three-day program aims to provide law enforcement personnel the resources needed to manage stress, overcome challenges and adversity, and

[163] Deborah L. Spence, et al., "Law Enforcement Mental Health and Wellness Act : Report to Congress" (Community Oriented Policing Services, 2019), 1, https://cops.usdoj.gov/pdf/2019AwardDocs/lemhwa/Report_to_Congress.pdf.

[164] Police Executive Research Forum, "Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department" (Police Executive Research Forum, 2018), 5, https://www.policeforum.org/assets/SanDiegoOSW.pdf.

[165] *Ibid.*

[166] For a more precise detail of the services offered and the steps taken to build the program, see the full report.

[167] Bureau of Justice Administration, "VALOR Officer Safety and Wellness Initiative," *Bureau of Justice Assistance, n.d.*, https://bja.ojp.gov/program/valor/overview#ugj9n.

[168] Hannah D. McManus, Nicholas Corsaro, and Robin Engel, "An Evaluation of the VALOR Law Enforcement Agency and Officer Resilience Training Program," *2020* (Submitted to the International Association of Chiefs of Police).

thrive in their professional and personal lives.[169] This training was evaluated at three police departments between 2018 and 2019, where researchers assessed attitudinal changes and perceived skill acquisition. Survey results suggested trainees were receptive and satisfied with the training, though there were limited statistically significant differences across trainees' self-reported resilience, mental health, and wellness. The authors noted several methodological limitations that precluded strong statements regarding the impact of the training program on law enforcement, indicating additional research was needed to assess training impact.[170]

Psychological Skills

Though police academies provide some training for psychological skills, it is often undervalued as compared to physical skills. Effectively navigating high-stress situations in which an officer might need to use force requires intense psychological training. According to a paper on new directions in police academy training by several psychological, police, and academic experts, this not only involves proper cognitive skills like decision-making, impulse control, conscientiousness, and adaptability, but emotional, social, and moral skills as well.[171]

For training and assessing cognitive skills, many departments currently rely on performance in other training areas.[172] However, departments need to design specific and standardized courses to directly assess cognitive aptitude. In addition, developing a recruit's independent decision-making skills is often impeded by the paramilitary model, which tends to micromanage cadet training and inform them exactly what to do at all times.[173] Instead, embracing the adult-learning model by providing discussions in break-out groups and simulations of high-stress scenarios can be more effective.

More must also be done to address officer's emotional skills, as an officer's emotional knowledge greatly affects how effectively they perform on the job. To remain composed in high-stress situations requires the ability to regulate one's own emotions, as well as the ability to recognize emotions in others. Research has shown that police officers can be taught to improve their emotional regulation skills, as well as their emotional intelligence.[174] [175] Instituting comprehensive officer wellness programs is important to the development of these skills, as are teaching techniques like breathing and mindfulness, and encouraging physical fitness, sleep, and proper hygiene.[176]

To establish valuable relationships with members of the community, officers must have proper social skills. As with cognitive and emotional skills, social skills like social competence (communicating tactfully and respectfully with others), teamwork, and persuasiveness can be taught and strengthened through a reformed academy culture. As noted earlier, when instructors of the paramilitary model berate and talk down to cadets, this effectively teaches cadets to do the same to the people they eventually serve. By instead treating cadets respectfully and providing them with the opportunity to lead as individuals, a training

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[169] https://www.theiacp.org/projects/law-enforcement-agency-and-officer-resilience-training-program

[170] Hannah McManus et al., "An Evaluation of the VALOR Law Enforcement Agency and Officer Resilience Training Program".

[171] Blumberg et al., "New Directions in Police Academy Training: A Call to Action".

[172] *Ibid*, 4.

[173] *Ibid*, 5.

[174] Matthias Berking, Caroline Meier, and Peggilee Wupperman, "Enhancing Emotion-Regulation Skills in Police Officers: Results of a Pilot Controlled Study," *Behavior Therapy*, 41, no. 3 (September 2010): 329-339, https://doi.org/10.1177/1748895814566288.

[175] Nicola Schutte, John Malouff, and Einar Thorsteinsson, "Increasing Emotional Intelligence Through Training: Current Status and Future Directions," *The International Journal of Emotional Education, 5, no.* 1, 56–72, https://psycnet.apa.org/record/2013-27507-005

[176] Blumberg et al., "New Directions in Police Academy Training: A Call to Action," 7.

culture like that of the WSCJTC can help foster respectful communication skills in all cadets. Additionally, academies can design training programs to boost skills like persuasiveness through scenario work.

Finally, since police work also carries extreme moral challenges, academies need to foster moral maturity and integrity. Building these skills can be achieved by exposing cadets to moral risks in the academy; during case studies and scenario-training, cadets should consistently be asked to discuss what they would do and explain why. Academies might also benefit from supporting spiritual and religious commitments of cadets (when applicable), which might further help in instilling moral skills.

The Peace Officer Psychological Screening Manual, produced by the California Commission on Peace Officer Standards and Training (POST), has been at the forefront of providing guidance on all phases and aspects of the psychological evaluation process and includes many of the listed recommendations.[177] The Commission continuously revises its recommendations based on American Psychological Association Research, and it offers evidence-based reasoning in support.

Conclusion

In summary, although few forms of police training have been subject to scientific review, scholarship in this area is growing. Some forms of police training, including de-escalation training and procedural justice training have received recent empirical evaluation.[178] [179] [180] These training programs have been correlated with several positive outcomes, such as reductions in use of force incidents, reductions in injuries, and increases in officer knowledge and skills. In contrast, training programs on implicit bias, peer intervention, officer wellness, and psychological skills have less evidence as to their efficacy but some of the initial findings are promising. While many of these types of programs have received some level of empirical evaluation, PERF found that, on average, officers do not spend a lot of time on these topics.[181]

Scholars note that police training is outdated and needs to include evidence-based, theory-informed curricula and delivery, which will ultimately improve learning and skill retention.[182] [183] A comprehensive review of the police training literature base has found that there is little evidence around police training modalities[184] and the existing literature is mostly hypothetical or based on other study populations. Despite these limitations, several of these studies point towards the utility of repeated content exposure and practice[185] [186] or booster programs.[187] The CCJ recommends that training content be delivered through a mixture of lecture, real-world video examples, scenario-based role playing, and group discussion.[188]

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[177] Shelly Spilberg and David Corey, "Peace Officer Psychological Screening Manual," *California Commission on Peace Officer Standards and Training*, 2014, https://post.ca.gov/portals/0/post_docs/publications/psychological-screening-manual/Peace_Officer_Psychological_Screening_Manual.pdf.

[178] Engel et al., "Examining the Impact of ICAT".

[179] Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey?".

[180] Nagin & Telep, "Procedural Justice and Legal Compliance".

[181] Police Executive Research Forum, "Critical Issues in Policing Series".

[182] Birzer, "The Theory of Andragogy Applied to Police Training".

[183] Mugford et al., "Improving Police Training From a Cognitive Load Perspective".

[184] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force".

[185] Kang, "Space Repetition Promotes Efficient and Effective Learning".

[186] Mugford et al., "Improving Police Training From a Cognitive Load Perspective".

[187] McLean et al., "Randomized Controlled Trial of Social Interaction Police Training".

[188] Center for Criminal Justice, "Effectiveness of Police Training".

We highlight the potential benefit of adopting resiliency-based training approaches as opposed to the traditionally taught, military-style training approaches. We contend that this approach enhances the ability of police academies to establish a guardian-centric culture that focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations.

Collectively the evidence suggests that police academies should reconsider the content and duration of training topics, along with their overall approaches for effective adult learning. Echoing the conclusions of the CCJ and many other experts in the field, we recommend a shift of the APD Training Academy away from a stress-oriented military style toward a resiliency-based approach supported by adult learning and student-centered instruction. Importantly, we encourage the APD to become an evidence-based learning organization, where changes in Academy training are rigorously tested and research findings are routinely shared with Academy staff and trainers to inform continual improvements in the curricula offered.

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5 APD TRAINING ACADEMY – FINDINGS AND ANALYSIS

The Austin Police Department is the principal law enforcement agency serving Austin, Texas. With over 2,400 personnel, including approximately 1,800 sworn officers, and a budget of over $375 million, APD is the fourth largest police department in the state of Texas. With ten patrol divisions and more than three dozen specialized units, APD serves a city of just under one million people and a geographical jurisdiction that spans 296.2 square miles.

The APD Training Academy is a self-described "state-of-the-art training facility"[189] located in southeast Austin, near the Austin-Bergstrom International Airport. The Academy facility contains classrooms, workout facilities, a firearm range, and a driving track. Academy staff includes the Training and Recruiting Units, all of whom work from the Academy grounds. The facility is shared by APD, the Austin Fire Department, and Austin-Travis County Emergency Medical Services. All police cadets train at the Academy for the duration of the training period. Cadets do not reside at the Academy and training hours are typically Monday to Friday from 7:00 a.m. to 4:00 p.m., with occasional night and weekend sessions.

Cadets selected to attend the Training Academy are assigned to either a Regular or Modified Academy.

- The Regular Academy is currently a 32-week program for police officer candidates with no prior law enforcement experience (starting with the 144th cadet class, cadets in the Regular Academy will also participate in a two-week community immersion program prior to the start of Academy training). Upon graduation, newly appointed officers are placed into a 12-week Field Training Program with a certified Field Training Officer (FTO). After successful completion of the Field Training Program, the officer is assigned to a permanent patrol shift, reporting to a corporal and sergeant.
- The Modified Academy is an approximately 17-week program for candidates with prior law enforcement experience deemed sufficient to qualify for a shorter, modified training program. Upon graduation, newly appointed officers are placed into an 8-week Field Training Program with a certified FTO, after which they are assigned to a permanent patrol shift reporting to a corporal and sergeant.

Cadet training consists of a combination of Physical Training, Academics, and Skills Training, and cadets are taught through a combination of classroom-based learning, hands-on physical and partner training, and scenario-based and role play instruction. The Training Unit, which is responsible for all cadet training, is divided into three separate sub-units: Cadet Training, Learned Skills, and Continuing Education.

In assessing the Academy, we have focused on a number of key areas, including Academy diversity, culture, teaching methods, cultural competency training, community input and participation, professionalism, cadet injuries and roadblocks to graduation, crisis intervention training, de-escalation and use-of-force training, the Field Training Officer program, and other issues of importance. Although the primary emphasis of our review has been on the readiness of the planned 144th cadet class in light of the City's stated objectives, we have also focused on the long-term potential for developing a transformational, best-in-class police training academy.

[189] https://www.apdrecruiting.org/academy

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KEY FINDINGS

Based on interviews conducted and documents and other sources reviewed, Kroll makes the following key findings and observations concerning the areas highlighted below:

5.1 Academy Diversity

Leadership. Academy leadership and supervisory staff currently reflect a significantly improved level of gender, racial, and ethnic diversity than in years past.

- The ten APD personnel who make up the ranks of Academy supervisory staff in the Cadet Training Unit (Commander to Corporal) as of March 15, 2021, include three females (Commander, Lieutenant of Cadet Training, and Sergeant of Learned Skills), two African American males (Sergeant of Cadet Training and Corporal of Learned Skills), and one Latino male (Sergeant of Cadet Training). Two of the female supervisors are also of Asian/Pacific Islander descent.
- Similarly, the Recruiting Unit supervisory staff presently consists of five APD personnel from Commander to Sergeant, including two females (Commander and Sergeant of Recruiting) and two African American males (Lieutenant of Recruiting and Sergeant of Recruiting II). The Recruiting Unit also includes significant racial and gender diversity at the officer and civilian ranks. Of the 18 officers assigned to the Recruiting Unit, seven are female, six are African American, and three are Hispanic (there are currently no Asian officers in the Recruiting Unit).

Training Unit. Overall, the Training Unit at the Academy shows the following gender and demographic breakdown as of March 15, 2021:

	# Personnel by Unit	Training Units by Ethnicity [1]							Training Units by Gender [1]	
		White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Cadet Training	15	53.3%	13.3%	6.7%	20.0%	-	6.7%	-	73.3%	26.7%
Learned Skills	17	52.9%	23.5%	17.6%	5.9%	-	-	-	94.1%	5.9%
E-Learning	3	100.0%	-	-	-	-	-	-	100.0%	-
Advanced Education/CE	11	54.5%	45.5%	-	-	-	-	-	100.0%	-
All Training Units	46	56.5%	23.9%	8.7%	8.7%	-	2.2%	-	89.1%	10.9%

NOTE: [1] Based on 03/15/2021 Roster compiled by APD HR.

- Although Academy instructors overall are less diverse, at the officer ranks within the Academy there is more diversity than had been the case historically. For example, the 14 instructors assigned to the Cadet Training Unit include two females (one of whom is Hispanic), three Asian or Pacific Islander males, and a Hispanic male. Although there are currently no Black male or female instructors, the Lieutenant in charge of the unit recently looked into applicant pools for instructor positions and discovered that, within the past approximately five to six years, not a single Black male or female officer had applied for a vacant instructor position. Since hiring a Black male sergeant, the Cadet Training Unit has begun more affirmatively addressing the lack of racial diversity within the unit. As a result, the Cadet Training Unit has since seen an increased number of African American applicants and, with a recent vacancy posting for three positions, the unit is actively working to recruit African American and other diverse candidates for these positions.

- The Learned Skills Unit instructors consist of 14 men and no women (although there is one female supervisor, as noted above), of which eight are white, two Black, and four Hispanic.
- The instructors and supervisors in the Advanced Education and E-learning units are entirely male, of which nine are white and four Hispanic (plus one Hispanic male with a temporary assignment).
    - Leadership is well aware of the need to further increase racial, gender and ethnic diversity among the ranks of Academy instructors, and APD claims to be actively in the process of recruiting diverse officers to fill the ranks of current vacancies.
    - There seem to be a variety of reasons why the Academy has had difficulty increasing diversity among its pool of instructors, including financial disincentives (a loss of overtime and shift differential pay), physical fitness requirements, and a perception that instructor positions lack prestige or a pathway to promotion. Kroll notes, however, that other professional benefits counter these perceived disincentives, including better work schedules, additional training opportunities, access to Academy exercise facilities, and the satisfaction of teaching future officers.[190]
    - Although APD's Chief of Police has the authority to unilaterally order transfers to the Academy in an attempt to increase diversity, the former Chief was reluctant to do so. Nevertheless, this is an additional tool in the Chief's toolbox that can be deployed if needed to enhance instructor diversity. For example, when the Boston Police Department faced a shortage of diverse investigators in their homicide unit several years ago, the department actively recruited candidates of color to apply for open positions and, when recruited officers expressed reluctance to make a change due to the intensity of the work and the quality of life that their current job assignment provided them, the Chief affirmatively ordered temporary transfers for the betterment of the department with the understanding that the officers could transfer back at the end of a year.

Recruiting Unit. The Recruiting Unit as a whole contains the following gender and demographic breakdown:

	# Personnel by Unit	Recruiting Units by Ethnicity [1]							Recruiting Units by Gender [1]	
		White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Recruiting Teams 1 & 2	18	50.0%	16.7%	33.3%	-	-	-	-	61.1%	38.9%
Explorers/PAL	5	20.0%	40.0%	20.0%	20.0%	-	-	-	100.0%	-
All Recruiting Units	23	43.5%	21.7%	30.4%	4.3%	-	-	-	69.6%	30.4%

NOTE: [1] Based on 03/15/2021 Roster compiled by APD HR.

- Overall, the Recruiting Unit contains a diverse team of recruiters and background investigators and has developed a broad and effective outreach program that extends to other cities and states targeting historically black colleges and universities, Latinx organizations, women, and military veterans, among others.

Diversity of Planned 144th Cadet Class. The list of eligible cadet candidates who are currently expected to attend the 144th cadet class consists of one of the most diverse classes in recent APD history, as reflected

[190] See APD Training Academy Curriculum Review, page 4 (discussing Instructor Surveys) (June 19, 2020).

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in the below charts (updated 3/31/2021).[191] As noted, there are currently 77 candidates that have been approved (down from 95 candidates as of December 10, 2020, due to attrition caused by the delay in re-starting the Academy). An additional 15 candidates have made it to Stage 2 testing. If those candidates are all approved, there will be a total of 92 cadets in the 144th cadet class. The below charts show the ethnic and gender make up of these two pools of cadet candidates. The first chart shows the total numbers and the second chart shows the percentage breakdown:

		Academy Class 144 by Ethnicity [1]					Class 144 by Gender [1]	
	# Candidates by Group	White	Hispanic or Latino	Black or African American	Asian / Islander	Other	M	F
Hired Candidates	77	33	27	11	3	3	65	12
Scheduled for Stage 2 Testing	15	5	6	4	-	-	9	6
All Candidates	92	38	33	15	3	3	74	18

NOTE: [1] Based on "*144th demographics.docx*" provided 03/31/2021

		Academy Class 144 by Ethnicity [1]					Class 144 by Gender [1]	
	# Candidates by Group	White	Hispanic or Latino	Black or African American	Asian / Islander	Other	M	F
Hired Candidates	77	42.9%	35.1%	14.3%	3.9%	3.9%	84.4%	15.6%
Scheduled for Stage 2 Testing	15	33.3%	40.0%	26.7%	-	-	60.0%	40.0%
All Candidates	92	41.3%	35.9%	16.3%	3.3%	3.3%	80.4%	19.6%

NOTE: [1] Based on "*144th demographics.docx*" provided 03/31/2021

- By comparison, the 143rd cadet class, which graduated 42 cadets in October 2020, was 50% white, 33% Hispanic, 12% Black, and 2% Asian. The percentages as to race and ethnicity (though not gender) for both the 143rd cadet class and planned 144th cadet class compares somewhat favorably to the 2019 census estimates, which show Austin as 48% white, 34% Hispanic, 8% Black, and 7% Asian. Note that the 143rd cadet class originally had 57 cadets, of which 15 did not graduate.

Anti-Racism Training. There are recent indications that APD leadership is making an intentional effort to enhance knowledge and understanding of racial equity issues. Within the past year, APD leadership attended two anti-racism workshops to address and better understand issues of systemic and institutional racism within the department. For example, in February 2020, Academy leadership and cadet instructors attended *Beyond Diversity: Courageous Conversations About Race*, led by Dr. Glenn Singleton. In September 2020, 18 APD leaders attended a two-day "Groundwater Analysis of Racial Inequities" workshop led by Joyce James Consulting LLC. By all accounts, both seminars were well received, with some talk among APD leadership of possibly incorporating one of these workshops into cadet training or annual training for Academy instructors.

[191] Data and classifications provided by APD.

- These workshops are designed to address larger issues of race and society, including issues of systemic and institutional racism. Police departments across the country struggle with accepting that their enforcement actions disparately impact communities of color. When speaking to Academy staff and APD personnel, Kroll heard frequently that APD does not make decisions based on race or ethnicity. Officers who are ethical and moral believe they would never intentionally discriminate or racially profile a subject. Getting officers to understand how long-standing systems of policing and society disparately impact communities of color can help establish a foundation to change police culture and positively impact community-police relationships.

Women's Mentorship Program. In 2019, the Academy developed a mentorship program for female cadets to help prepare and guide them through the Academy. The program was started by a female lieutenant after learning that the percentage of female officers employed at APD (approximately 10%) was less than the national average (13% overall and 17% for larger agencies), and that the female attrition rate at APD was also significantly above the national average, according to her research. The mentoring program, which was adopted as part of APD's 140th cadet class, attempted to provide support to female cadets by assigning them female officer mentors within the department. The goal was to provide guidance, encouragement, and assistance to female cadets as they navigated the various complexities they might face in the academy. Despite high hopes, the initial mentoring program was not successful at reducing female attrition. Of the 17 women who began the 140th Academy class, only four graduated.

The lieutenant who started the program teamed with an academic researcher to conduct additional research into the program and to obtain feedback from the program participants. Based in part on this feedback, adjustments were made to the mentoring program to address some of the concerns regarding potential conflicts in cadets reporting complaints about the Academy to their mentors, who might be perceived as having certain obligations pursuant to APD's chain of command, particularly if they were part of Academy staff. Assigning female officers within the department who do not work at the Academy as mentors generally mitigates this concern.

Overall, despite some conflicting information from former cadets, the feedback from cadets and mentors who have participated in the mentoring programs has been largely positive. Many female cadets have found that having a mentor within the department provides someone with whom they could address the stresses and anxieties associated with the training program, particularly as a female cadet, such as the physical component of training and the male-dominated instruction.

There currently are no other formal mentoring programs within the department. Developing additional mentoring programs for all cadets who believe they could benefit from having a mentor while in the Academy could help relieve some of the stresses all cadets inevitably face in the training environment and could prove particularly valuable to cadets of color. While cadets typically bond with their classmates, another classmate may not be able to help or provide appropriate guidance to a fellow cadet experiencing an issue or concern, as they are learning right along with their fellow cadets. But being able to confidentially consult with another officer in the department who has already experienced what the cadet has experienced may help put the cadet at ease knowing there is someone he or she can turn to for potential guidance.

LGBTQ+ Training. The Academy appears to do a good job of training cadets on LGBTQ issues, with two hours each of course content devoted to policing and transgender issues taught by an openly transgender instructor, and an introduction to LGBTQ issues traditionally taught by Sergeant Michael Crumrine, the president of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement.

- The transgender course occasionally includes a guest speaker to discuss transgender issues from a parental standpoint. The speaker is the parent of a transgender daughter and the head of security and operations at a local community college. He is relatable to cadets and provides powerful testimony from a father that helps build empathy and understanding on transgender issues and the prejudices and stresses confronting transgender individuals.
- That said, the Academy needs to do a better job of incorporating awareness of LGBTQ issues into tactical training taught in the Learned Skills Unit. For example, we were informed that Learned Skills does not teach cadets how to properly search Transgender individuals (they only teach male/female searches). What are respectful ways to approach it? What questions should officers ask of transgender subjects? How can the Academy properly equip cadets for respectfully handling these sensitive issues when confronted with them on the streets? Many Learned Skills instructors have traditionally been uncomfortable with transgender issues, but this needs to change if the department is to be a truly community-oriented police agency. Officers need to be trained tactically and properly prepared for all sorts of scenarios they will eventually face. APD will not gain community trust if officers are not perceived as empathetic to all communities in Austin, and they need just as much training in these areas as in tactics and procedure.
- Moreover, on a department-wide basis, the APD needs to improve training and educating officers in how to treat the LGBTQ+ community with dignity and respect. While cadets who have graduated from the Academy within the past six to seven years have received excellent training on transgender and LGBTQ issues, this training has not been pushed out to the department as a whole. Consequently, officers who graduated from the Academy more than seven years ago—including the "Fifth Floor" leadership at APD—have not received any department-sanctioned training on understanding the unique issues associated with the LGBTQ+ community,[192] such as the heightened threat of violence faced by LGBTQ+ individuals; the LGBTQ+ community's historical reluctance to report matters to the police; understanding present-day and historical relations between law enforcement and LGBTQ+ communities in the United States and the challenges and barriers faced by LGBTQ+ crime victims; the protocols for police interactions with LGBTQ+ individuals during searches, arrests and booking procedures, recordkeeping and report writing; and ensuring appropriate, lawful and safe treatment of LGBTQ+ suspects and detainees, and necessary medical care.
    - Some areas of particular note in which the department has lacked adequate training include: properly reporting the name, pronouns, and gender of individuals who are transgender, non-binary, or gender non-conforming; familiarizing officers with intimate partner violence involving LGBTQ+ individuals and how to assess incidents that are appropriate for same-sex relationships or those that involve trans partners; and being sensitive to the unique reporting barriers and challenges in the LGBTQ+ community, including fears of being marginalized, outed, abused, or ridiculed as a transgender or non-gender conforming person. It is imperative that all APD personnel receive comprehensive training about LGBTQ+ individuals and communities, including history, culture, contributions, challenges, and needs. Effective training will offer practical guidance for improving police-citizen interactions with LGBTQ+ individuals.

[192] The term "LGBTQ+" refers to the broad group of people who do not conform to traditional expectations with respect to gender or sexual orientation, including lesbian, gay, bisexual, transgender/non-binary, and queer individuals, as well as those who are intersex, two-spirit, asexual, and many others.

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Overview of APD Online Recruiting Materials

The Austin Police Department's official online recruitment outlets include its Facebook, Twitter, Instagram, and YouTube accounts, as well as its website, https://www.apdrecruiting.org/. An overview of these outlets, including a description and analysis of their contents, is provided below.

Facebook

The official Facebook account of APD Recruiting is @JoinAPD and includes videos, photos, and written posts. There are 38 videos posted to the page, including short outlines of four specialized units (Air Support Unit, Patrol K9 Unit, Bomb Squad, and Lake Patrol), informational presentations on the application and hiring processes, and miscellaneous videos showing workouts, promos, media features, and officer testimonials. Several hundred photos have been uploaded, including officer profiles, police-community interactions, and informational posters. One or two posts are added each week, including additional photos and information about recruitment events and the application process.

Many of the posted videos include diverse voices and depict a fun but disciplined academy environment. The presentations, interviews, and specialized units' videos also provide important and transparent information on the Academy. However, the Patrol K9 and Air Support Unit videos display the paramilitary and warrior side of policing, as they include clips of high action and sometimes aggressive policing sequences. While this is surely representative of part of the job, as a recruiting tool, it may attract candidates interested more in fighting criminals than serving or protecting the community. Additionally, all officers interviewed in these specialized unit videos were white males, suggesting a lack of diversity in these units.

The majority of posts and photos on the Facebook page spotlight positive police and community interactions and promote a police department dedicated to serving the community. For instance, there are posts showing officers attending community events, visiting young students, and walking with and listening to protesters following the murder of George Floyd. In addition, the department appears to have made a concerted effort to promote diversity in officer profiles, including the active recruitment of women. The page was created in 2009, and while early posts highlight weapons and use of force training, an overemphasis of which might also re-enforce the warrior mentality, in recent years these posts have become infrequent. The department should continue to highlight diversity and effective community policing on this page, but care should be taken to ensure that the department's actions, policies, and culture match those espoused in its public recruitment efforts.

Other Social Media

The recruiting team's Twitter and Instagram pages are both @JoinAPD, and feature much the same content as its Facebook page. While Twitter posts are slightly more frequent than Facebook posts, they likewise include officer profiles, event promotions, and examples of community interactions. All of the Instagram photos are included on the Facebook page. The YouTube account ("Austin Police Department Recruiting Unit") and most of its videos are a subset of those on the Facebook page. In addition, the YouTube page shares videos from ATXN and other news networks featuring interviews and spotlights of women in the APD, as well as several episodes of a four-part series on the Austin Explorers, which follows two Austin youth in a four-week program designed to highlight career opportunities in law enforcement. While these videos show diverse youth developing communication and leadership skills, the program adopts a paramilitary model. The page also includes a video from the Austin Police YouTube account overviewing the department and its efforts to build trust in the community, as well as a six-minute recruiting video shared by ATXN espousing the values of integrity, accountability, respect, and ethics within the department.

Website

The APD Recruiting Website provides prospective applicants with information about APD and its training academy. Under "The APD" tab, the website offers a brief overview of the department's merits and benefits, displays officer testimonials, and describes APD's commitment to the community beyond policing. Additionally, there is a page displaying testimonials specifically from women in the department, and a page describing the department's inclusion and appreciation of military veterans. Under the "Careers" tab, the website describes the application process, prospective pay and benefits, and several of the possible career paths for APD officers. The "Academy" tab contains a brief description of the regular academy and the modified academy, as well as a more detailed description of the components for cadet training. The website also offers a waiting list to participate in APD's Officer Ride-Along Program prior to applying. Additionally, there is a page dedicated to promoting the city of Austin, as well as an FAQ and Contact page.

LGBTQ+ Recruiting. The Academy's current efforts to recruit in the LGBTQ community include setting up a recruiting booth at the Austin Pride festival, highlighting the work of APD's LGBTQ officers, staffing the recruiting team with officers from the LGBTQ community, and adapting the hiring process to meet the current needs of the LGBTQ community (for example, Stage 1 testing in APD's hiring cycles allows for transgender applicants to test with the gender they identify as during the physical fitness assessments). The department also participates in the Pride parade and displays a picture of former Chief Manley marching in the Pride parade on the APD recruiting website page. APD recruiters are also encouraged to

seek out opportunities and generate ideas to market to the LGBTQ community, including working with the APD Office of Community Liaison LGBTQ representative and the Lesbian and Gay Police Officer's Association. In the past, members of APD have collaborated with the Trevor Project to produce a video aimed at preventing suicide among LGBTQ teens and publicly celebrated the transition of a transgender officer within APD.

Despite these efforts, the belief among openly gay officers we spoke with was that the department needs to be more proactive in recruiting LGBTQ candidates. Some examples of things the department does not currently do that would improve its outreach and recruiting in the LGBTQ community include partnering with Out Youth Austin, an organization that allows youths of all sexual orientations and gender identities a place where they are acknowledged and accepted for who they are; actively engaging with the Gay-Straight Alliance and queer-identified organizations on college campuses; and recruiting LGBTQ+ service members who want to stay in public service after they serve.

- In addition, the hiring standards of the department are perceived as somewhat antiquated, which further inhibits efforts to recruit members of the LGBTQ+ community. These standards and other aspects of the APD recruiting program will be a major focus of the next phase of Kroll's review.
- Moreover, although there is a civilian liaison to the LQBTQ+ community, supplementing that position with a sworn officer to serve in that function would help recruiting efforts.

5.2 Academy Culture

The culture of a police training academy reflects the culture of a department and impacts the mindset and approach to policing that newly sworn officers adopt upon graduation. How cadets are treated, how they are expected to act, what explicit and implicit messages are communicated to cadets – all of these things impact the type of police officer a training academy is trying to mold prior to sending him or her out into the community. While not everything about policing can be taught at the Academy, the physical and classroom components taught there are the primary formative experiences of each cadet before becoming a sworn officer.

In conducting this assessment, Kroll solicited a wide array of insight, experiences, and observations concerning APD Academy culture, and we received widely disparate views about the validity of the way things have traditionally been done within APD. We have therefore divided this section into two sub-sections. First, we provide a mostly critical view of Academy culture and training that was provided by several former cadets from the 137th and 140th cadet classes, supplemented by input from some recent graduates of the 143rd cadet class. However, because many of the negative aspects highlighted by the former cadets—which were supported by corroborating evidence and were consistent with the descriptions of past training practices as described by many current APD officials—have been modified within the past two years or so, we also provide a more up-to-date overview of Academy culture as it presently exists.

5.2.1 Academy Culture – A Critical View

Academy Culture as Described by Former Cadets. Kroll conducted detailed and comprehensive interviews of six former APD cadets from the 137th and 140th cadet classes. The statements and information provided by these former cadets were corroborated by personal documentation, including medical records, emails, text messages, Workman's Compensation Records, and, in one instance, a telephone recording between a cadet's father and an APD official.

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Four of the cadets interviewed were enrolled in the 137th cadet class (May 2017 - December 2017), while two of the former cadets were enrolled in the 140th cadet class (October 2018 - May 2019). As indicated in the below chart, all of the cadets were separated from the Academy for physical training-related injuries.

Class #	Race	Gender	Official Reason for Separation	APD Separation Status
137	W	M	Failed Fight Day (3 attempts)	Involuntary*
137	B	F	Not physically ready / returning from light duty	Voluntary
137	W	F	Problems with family, police culture and fear of guns; injury to upper extremities during Fight Day	Voluntary
137	W	M	Injured during Fight Day (fractured rib)	Voluntary
140	W	F	Stress Reaction Training - not physically prepared	Voluntary
140	H	F	Stress Reaction Training - not physically prepared	Voluntary

*APD documentation lists this cadet as leaving for involuntary reasons; however, the cadet reported that he was coerced into signing a separation form indicating that he chose to leave voluntarily.

Although each of the cadets signed a separation form indicating that they voluntarily resigned from the Academy, they each claim they were essentially coerced into signing the forms when presented with the choice of voluntarily resigning or being terminated involuntarily. When cadets are terminated, they are prevented from ever again working in law enforcement in the State of Texas. Faced with this decision, most cadets resign voluntarily to avoid losing the ability to apply to other police departments in the state. This process was described sardonically by an APD official as a "voluntary-involuntary resignation" and also noted in the report on Racial Inequities and Institutional Racism by Joyce James LLC (2020), at page 20: "Certain cadets are targeted and pressured relentlessly, then asked to resign or be fired. In the latter case, they would likely be banned from future law enforcement jobs in the whole state."

Many of the former cadets interviewed became visibly emotional when answering questions, and it was readily apparent that all of the cadets were serious applicants who exerted significant effort and made personal sacrifices—such as leaving their prior employment and relocating their families—in the hope of becoming sworn members of the APD. The findings and themes of these interviews are summarized below.

General Training Experiences

"Warrior" Culture. Each of the former cadets interviewed said that their Academy class taught the "warrior mentality" from the moment training began. They called the environment "toxic," "abusive," and "combative." They felt that the methods used to teach embraced "intimidation tactics." Instructors frequently yelled and cursed at the cadets. Cadets were punished in "smoke sessions" – i.e., physical punishment exercises designed to punish the entire class for one or more cadets' "mistakes." The cadets felt that the instructors lacked empathy and did not care about their well-being, which they believed would create police officers who were indifferent to the community.

Selective ridicule. Instructors chose specific people to relentlessly ridicule and mock, which occurred mostly during outside physical training and smoke sessions. Some of the cadets noted that those selected to be ridiculed tended to be minorities, females, smaller-statured cadets, older cadets (late 20s and older), and anyone who was perceived as unable to keep up with other cadets during a specific training session or who did not conform to a rule (stated or unstated). There appeared to be a particular bias against female cadets, which seemed to correspond to fewer females graduating. The bias exhibited by the instructors was

primarily driven by the perception that particular cadets could not meet the required physical fitness expectations needed to become an APD officer.

Bias-based instruction. Although the cadets found the course work challenging, some Academy instructors implicitly taught their students to be biased in enforcing the law. For example, the instructors discussed crime-fighting examples and showed films/video that frequently incorporated persons experiencing homelessness, minorities, and sex workers. The instructors made comments suggesting that cadets should target these groups on slow nights, implicitly suggesting that these population subgroups were a societal nuisance and basically worthless. One cadet reported: *"A firearms instructor asked us to routinely pick out someone out of a crowd. It could be at the grocery store, a game, he threw a few scenarios out there for us. He said pick that person and ask yourself, "How would I kill that person?"*

As a result, some of the cadets perceived that the bias was inherently a part of Academy culture and that instructors were indoctrinated into that culture. According to the cadets interviewed, while APD "talked a good game" about being inclusive, in reality, they perpetuated exclusion. One cadet noted that, while *"on day one of training, one of the instructors stated if you have bias, you cannot bring it to work,"* it sounded as if the instructor had read from a rule book and it was not subsequently reinforced.[193]

Anti-community bias. Two cadets recalled a female sergeant coming into their class asking the cadets why they wanted to be police officers. Before soliciting an answer to the question, the sergeant stated, *"You better not tell me it is because you want to help people, or I will punch you in the fucking face."* The message absorbed by the cadets was that the Austin community was the enemy, and there was little emphasis on genuine community engagement. (Academy leadership has indicated that this incident involved a guest instructor who was subsequently admonished by APD).

Cadet Resources/Assistance. Most of the former cadets interviewed stated that there was no one to speak to about the problems they faced. When one cadet asked why he failed Defensive Tactics, he received no response. He heard indirectly that one had to take a certain number of hits to pass. Kroll notes that the inability of cadets to ask questions or challenge an action taken against them is consistent with the findings noted in the Racial Inequities and Analysis report of Joyce James Consulting, LLC (2020).

Training Academy Equipment/Facilities. In general, the former cadets interviewed did not feel that the equipment or facilities were biased toward one gender or race. However, one cadet stated *"There was a lot of waiting for bathroom breaks and the person in the bathroom had to be fast. There was not enough time to take off the equipment and go to the restroom; not enough privacy to change clothes – we had to change next to a car in the parking lot. If carpooled, you would be next to several people, men and women. Half-naked next to each other next to vehicles."*

Separations/Resignations. All the former cadets interviewed believed they were essentially coerced into resigning because they were expressly told that, if they did not "voluntarily" resign, they would be involuntarily dismissed or terminated and could never work in law enforcement again. Although APD records indicate that one of these former cadets left "involuntarily" after he was badly injured during defensive tactics, he told Kroll that he eventually signed a form indicating he left voluntarily (it is unclear if this is a mistake in APD documentation).

[193] *Diversity*. Although the former cadets differed as to the degree of diversity within their respective classes, most reported that their class was more diverse when it started than at graduation, with graduating classes consisting of a higher proportion of white males than at the start of Academy. The instructors also lacked diversity in these cadet classes, with only one female and a small number of Hispanic instructors mixed among a large number of white male instructors.

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Physical Training Experiences

Several former cadets interviewed, from both the 137th and 140th cadet classes, reported that Stress Reaction Training (SRT) and Defensive Tactics (DT) training was physically and emotionally abusive. The below summaries are approximate, or near-verbatim statements of these cadets as reflected in Kroll's notes of interviews:

A cadet from the 137th cadet class reported:

> *On day two, we were doing SRT (Stress Reaction Testing). The instructor yelled, "Anyone who is last [running] in getting back here will not get a drink of water." I pushed as hard as I could and hurt something in my leg. I thought I dislocated my hip, but I had sprained my hip muscle. He sent me to the ambulance; there were already two other cadets there who were dehydrated. They went to the hospital. One instructor followed them. I had an x-ray. The medical examiner told me, in front of the Academy instructor, I would need Physical Therapy to address the injury for at least 6 weeks. APD placed me on light duty. I was required to go to class at the Academy, but no physical training. I was on crutches.*
>
> *One instructor said, in a threatening manner, something to the effect, "Wait until you get back out there." I felt guilt and sadness that I could not participate. I also felt that the instructor was intimidating me about my return to imply it would be worse than I could imagine.*
>
> *Once I was back on regular duty, I was forced to do physical training immediately without any time after recovering from my injury to work back in training shape. I could not do it and ultimately passed out on day three of my return to full training.*
>
> *I was laying on the floor semi-conscious when I was surrounded by instructors and a sergeant. The sergeant said, "You can't catch up." I said, "I can". When I realized this was not just a head game, I said "Okay, I will leave." The sergeant said "good" and gave me the papers to sign and I was asked to leave.*

A cadet from the 140th cadet class, who resigned after the first SRT session, reported:

> *On the first day, in full uniform with boots and body armor, I fell behind in the first run. They said derogatory things about my weight. The cadets had to hold water bottles in t-position or overhead without moving for a period of time. They were repeating, "Why are you here? You are not going to make it so why don't you run to your car." They said I had my shoe untied and I was overweight. They had three water breaks in two hours and cadets were required to ask for water. They were prohibited from touching anyone during the drill, but I was grabbed three times [by instructors] during physical drills – I did not find it helpful. I was pulled out of the group and told to face the group. I saw people in heat distress. That is when I decided I had to get out. I did not feel like they were attending to cadets in distress or caring to see if everyone was ok. Ambulances were on the premises but too far away. It was hot, it was dangerous.*
>
> *After we went from the fire tower back to the classroom, they asked if anyone wanted to leave. I left. Their own policy said you cannot do this drill more than 90 minutes, but they intended to do another 90 minutes. They are very nice to those who are getting ready to leave. "Are you ok? Do you need water?" At that moment we heard over the radio that "someone passed out." I heard several people (up to 9) had serious injuries, heatstroke, etc. that first day.*

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I felt there was a lack of caring for the cadets.

A second cadet from the 140th cadet class reported:

> *At 2:30 pm on day one, they took us outside, fully clothed in full uniform with water bottles. We went to the track. The instructors said, "We will do pushups and squats." A lot of yelling and directing (you cannot drink unless we tell you to). Run from one spot to the next and do pushups and squats. Stand and hold water bottles in both hands at a certain height and do not move. More running (and in boots). "No looking at each other, no checking on each other, no talking to each other."*
>
> *Run again. Run again. We went to the Concrete Fire Burn Building. More squats, pushups, continued yelling. Some personal insults toward women's physical fitness. Called out one male using derogatory comments about him failing a previous class. Embarrassing specific cadets. Then we had to climb the tower stairs.*
>
> *The instructors got a brush truck and started spraying the cadets with water. It is not painful, but it was just embarrassing. Then, we had to run back to the classroom at around 4:30 exhausted and soaking wet.*

Two former cadets from the 140th cadet class, one male and one female, remained in the Academy through a portion of DT training, which was informally referred to as "Combat Training" and "Fight Day." This aspect of DT training occurred without any explanation or preparation. The below accounts were reported to Kroll with strong displays of emotion by the cadets we spoke with.

A female cadet from the 140th cadet class reported:

> *First day of defensive tactics, two people at a time were told to run around the track two times, then perform exercises like sit-ups and pushups until exhaustion, then go to the gym/ring, put on boxing gear and be ready to hit the instructors; we were specifically told to "hit the instructors, but not below the belt." There was no pre-drill preparation or training. When in the ring, I got hit by the instructor multiple times, and then was hit hard enough so I flew out the ring. I was told, "You must get back in the ring and keep fighting." I received a labral tear. I was told I was "small" and would have to just deal with it. I did not resign until firearm instruction, because during firearm instruction I had eye inflammation, an abdominal strain, and the labral tear, so shooting hurt more than I could bear. So, I resigned.*

A male cadet from the 140th cadet class reported:

> *During DT week, I was very nervous because cadets already did not look "right" to me. One cadet had a bloody bruise on the inside of his thigh, another cadet had an injury, but people were not allowed to discuss DT. I had no professional training to fight. DT was going to be held in a separate building. The cadets waited for an hour. The Instructor came in and looked everyone over. The instructor said, "We are going to see who can fight and can't. Put your handgrips on and get your bags ready." Then, two additional officers came in. They said this is your last chance to use the restroom. The cadets were told to line up against the wall. I did not even know how to wrap my hands; I did the best I could. They then put us in groups by size. We ran across the track multiple times. Then we separated into groups and were told to do exercises, pushups, sit-ups; if you looked like you were slacking, you were told to do more. They played loud music. The instructors called us into the gym to put on headgear and a mouthguard. There were "three makeshift boxing rings."*

The instructors told the cadets to hit a static object (heavy bag?). An instructor told me to hit the object harder. A plainclothes officer told me to go into the ring right now. The instructors were hollering and cursing at me. The instructor said, "No headshots, no groin shots." No questions were permitted. I went into the ring and into my corner. Then the [tall] officer started taunting me – "You gonna hit me, you gonna hit me?" The instructor hit me "with such force that my mouthguard almost fell out, I was trying to get it back in, then I got hit so hard I fell out of the ring."

I was told to get on my feet and go to a room. I felt like I had been knocked out and I was confused. I was told to sit down and not to talk in a closet with an officer who was also in that closet. A second cadet was sitting next to me "with no color in his face and he was acting confused."

After this round in the ring, I was told to go back to the track and run. I only recall being yelled at and being given orders. I was then told to go back to the gym, put the gear back on and hit the static object, and then to get back in the ring. They also had a large video camera in my face the whole time. When I went back into the ring, I was told not to hit the instructor's groin or head. The officer hit me in the kidney.

At that point, I thought I failed DT. I heard screaming: "Don't quit, keep fighting." I was hit harder, and I lost my breath. I was put back in that small room, closet, and prohibited from talking. After about 15 minutes, an officer came in and asked me if I was ok, and said, "If you need to quit, quit now." The instructor said, "You almost made it." He said you can keep going including the track, the exercises, hitting the object and getting back in the ring. I did not want to quit so I repeated the cycle and got back in the ring. This last time, a different officer hit me. I heard a cracking sound, and I was again hit out of the ring. The instructor told me, "You can't make it and you don't deserve to be here." He said, "Go to the fucking wall" (and the f-word is used constantly). Two officers came in and instructed me to follow them. I was given no medical evaluation and no water. I grabbed my stomach and vomited into the trash can. I saw blood. Another officer came in and told me that I did not pass the exercise. I said, "No sir, I do not understand." The officer replied, "You will sign these papers. We are going to do this the easy way or the hard way. If you do not sign these papers, you will not come back here or work in any other police department anywhere. You are injured, you obviously cannot continue." I attempted to argue: "I passed everything, what did I fail? There is no objective, no training." The officer replied, "If you do not sign it, we will terminate you." I signed the resignation document. They escorted me out.

After I resigned, I went to the hospital. I was evaluated and it was determined I had soft tissue damage. Some APD officers came to my home to interview me later that day. My significant other refused them entry into our home. I later learned (through word of mouth), that cadets needed to be able to take a specific number of hits to pass DT; you had to have a certain amount of endurance; it was a rite of passage.

In addition, although Kroll did not interview him, another former APD cadet who attended the 140th cadet class, filed a lawsuit against the APD on September 8, 2020.[194] The lawsuit alleged that eight cadets became ill during SRT drills before the plaintiff, who was allegedly incoherent and unable to walk, required

[194] KXAN Staff, "Former Austin police cadet sues department after being hospitalized during training," *KXAN Austin*, September 2020, https://www.kxan.com/news/local/austin/former-austin-police-cadet-sues-department-after-being-hospitalized-during-training/. (Wise v. Manley, Case Number D-1-GN-20-004731. Filed: 9/8/2020).

medical attention. The complaint further alleged that several cadets required emergency treatment because of heat and hydration issues that were caused, in part, by instructors' refusal to permit cadets unrestricted access to water. The complaint alleged that the plaintiff spent 30 days in the hospital and amassed over $300,000 in medical expenses.

As the above statements and information suggest, the experiences of these former cadets paint a negative portrait of Academy culture and training that reflect poorly on how cadets were treated. The messages taught by such training tactics arguably bear little correlation to preparing cadets for policing as guardians of the community in a 21st century urban environment.

According to the former cadets interviewed, the physically abusive component of Academy training – at least in the 137th and 140th cadet classes – was excessive and led to many cadet injuries. As one cadet stated, *"The instructors had my future in their hands. Why didn't they teach self-defense tactics before they commenced beating on me? I know there is a limit on the amount of force that is acceptable in a training scenario and it was far exceeded."* The experiences of these cadets suggest that the physical and psychological abuse of SRT and DT exercises (leading to dehydration, exhaustion, muscle cramps/pulls, broken bones, injured soft tissue) was excessive and occurred before cadets were properly trained or prepared to participate in these intensive exercises. The lack of physical preparation, along with the inability of cadets to ask for help from peers and instructors when they were tired or hurting, led to a significant number of cadet injuries and, in many instances, permanent elimination from the Academy.

Kroll acknowledges that the above statements and information are limited to a half dozen or so former cadets and do not necessarily reflect the perceptions or experiences of many other cadets, successful and unsuccessful, who have graduated from the Academy during the past several years. Many APD officers we have interviewed over the past few months believe that the manner in which the Academy prepares cadets is necessary, and that the allegedly abusive practices noted above are essential to preparing cadets for contending with what can at times be a dangerous and pressure-filled job. These officers contend that, without an element of physical and psychological stress applied during training, officers will be unprepared for the many and varied stressful encounters they will inevitably confront, at the risk of public safety and officer safety. While some of the interviews confirmed aspects of SRT and Fight Day as described by the former cadets, others offered variations in the programs and described them as less abusive.

Academy Culture as Described by Recent Graduates. Kroll also interviewed four cadets[195] who went through the 143rd cadet class, which was greatly impacted by the COVID-19 pandemic. The Academy class was suspended on at least two occasions, as 83% of the cadets were at some point infected with COVID-19. This naturally caused heightened anxiety among cadets that training might be canceled, and partly as a result, Academy staff appeared to be particularly focused on retaining and graduating the cadets in that class.

Nevertheless, due to a combination of injuries, illness, and some failures, only 42 cadets (approximately 72%) of the original 58 candidates who entered the Academy graduated and, as noted above, at least two of those cadets will need to be recycled through the next Academy. Below is a summary of key topics explored during Kroll's interviews with these recently graduated cadets:

"Warrior" Culture. All the cadets/officers felt supported during the 143rd cadet class. They believed the Academy staff cared about their wellbeing and they perceived instructors as unbiased. However, one cadet said the instructors were inconsistent in their behavior and training, with some instructors acting like

[195] Kroll attempted to interview eight recent Academy graduates, though only four responded. Although all four of the cadets/officers interviewed were male, they were racially and ethnically diverse, and included one white, one Black, one Hispanic and one Asian officer.

mentors while others acted more military-like and formal. Moreover, some instructors appeared more engaged with the cadets than others.

According to one cadet, Academy instructors emphasized that, during potentially hostile encounters, it is important that cadets/officers learn to "fight and win." At no time was it suggested that potentially hostile encounters should result in a "win-win" with both the officer and citizen remaining unharmed.

Selective Ridicule. Although there was plenty of yelling, screaming, and cursing at cadets at various times during the Academy, these cadets did not perceive that any cadets were selectively ridiculed, and each responded differently to whatever harsh tactics were applied. Although some cadets were affected by it more than others, none of the officers felt that the screaming and cursing was excessive, and each believed it was to be expected in a police training academy.

Biased-based instruction. These cadets perceived the 143rd cadet class as diverse in terms of race, ethnicity, and gender, with no obvious drop-off among minorities or females upon graduation. However, one cadet felt there was insufficient Black representation in the class. None of these cadets perceived any instructor bias and each found their bias training informative, although one cadet noted that "it was a little confusing."

One cadet, who is now a sworn officer, perceived some anti-female bias among some of his cadet class and suggested that the selection process may not capture biases such as misogyny. He also thought that, in the Academy and in the field after graduation, Black police officers are sometimes held to a different standard (e.g., their mistakes are less likely to be overlooked as compared to white officers). While this cadet observed some peer biases, he did not feel it was substantial or widespread.

Community bias. Each of the graduating cadets said the Academy provided a balanced perspective on when to apply protective versus warrior styles in policing. These cadets said they learned a great deal about community relations and population subgroups, including the LGBQT+, Spanish-speaking, deaf, and mentally impaired communities. They believed the Academy taught the need to care for and understand the community, and to be equally fair towards all population subgroups. However, one newly sworn officer noted that, due to high call volumes, it is difficult to implement the community relations training they were provided at the Academy, due to lack of time.

Cadet Resources/Assistance. The cadets felt supported by Academy staff. For example, a Peer Support Sergeant spoke to the cadets several times and the Employee Assistance Program (EAP) staff spoke to their class during the first few days of the Academy. The cadets felt they could discuss their problems and that there were people to speak to if needed.

Physical Training. Some of the role plays were physically intense; one cadet described them as potentially excessive and "overly aggressive" and one cadet we interviewed was badly injured during the final role play. APD allowed this cadet to graduate and be assigned to light duty on the condition that, once cleared by medical staff, he would need to complete the final role play, which he subsequently failed. The cadet believed he failed because "he was forgotten about when on light duty assignment" and not physically rehabilitated to prepare him for the physicality of the final role play. Nevertheless, APD has since rehired this cadet, who will be recycled into the next Academy class.

Another cadet reported that Defensive Tactics exercises preceded any actual defensive skills training. He believed cadets should have received more skills training before DT, stating, "If you go to hitting a heavy bag without training, it will lead to broken hands and wrists." This cadet was injured during DT, although he acknowledged that he may have simply exacerbated a prior injury.

Use of Force Training. The 143rd cadet class included significant emphasis on emotional control, verbal and tactical de-escalation techniques, including Crisis Intervention Team (CIT) training and Integrating Communications Assessment and Tactics (ICAT), two modern approaches to use-of-force situations that are consistent with best practices. One cadet thought that more "hands-on" training might further reduce the likelihood of escalation in use-of-force situations on the street. When the cadets were asked if they received any instruction in the classroom or on the range concerning when it would be appropriate to point a firearm at a person, we received inconsistent responses (e.g., two cadets said they received "no training," although one said he may have heard something about a "fourth amendment seizure", while two cadets were not sure if this issue was ever covered).

5.2.2 Academy Culture Today

Paramilitary model. The Training Academy remains a predominantly paramilitary training model, albeit with a greater emphasis than in years past on a classroom-based, learning-institute style of teaching.

- Although most Academy leaders describe the Academy as a "hybrid" model closely associated with a paramilitary model but tampered with a mix of adult learning courses, the reports of Dr. Villanueva and Dr. Ferguson, and interviews of Academy supervisors and instructors, suggest the paramilitary model continues to predominate.
- Three frequently cited examples of the Academy's transition away from a paramilitary format include: First, the Academy has eliminated the requirement that cadets "make a hole" whenever an instructor or supervisor walks through the hallway (cadets were formerly required to stand at attention against the wall so that senior personnel could get through). Now, cadets are encouraged to extend a handshake, introduce themselves, and engage in conversation. Second, cadets are no longer required to wear camouflage, military-style attire as the uniform of the day in Academy. Third, there are fewer one-on-one, in-your-face stress actions (yelling and screaming), which are now more group focused.
- Cadet surveys administered by Dr. Ferguson after the 141st and 142nd cadet classes suggested that most courses continue to be taught in a highly formalistic and stress-based manner, with cadets yelled at, berated, and degraded by instructors in certain classes. Moreover, according to Academy instructors and supervisors with whom Kroll spoke, the Academy has continued to impose behavioral modification exercises (i.e., group calisthenics and exercise drills at the sandpit) as collective discipline for cadet mistakes and compliance failures.
- The report of the Community Video Review Panel (CVRP), released on January 18, 2021, also highlighted concerns regarding the Academy's culture as reflected in many of the Academy's training videos. A few of these concerns are highlighted in the below excerpts:

> *The us-versus-them bias was explicit in some of the videos--i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:*
>
> - *An enhanced focus on officer safety over the safety of the community as a whole,*
> - *A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"*
> - *An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and*

- *Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.*

. . . .

We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.[196]

APD's Rationale. APD leadership has expressed its belief to Kroll that some aspects of a paramilitary structure are an essential component of police culture and paramount to ensuring cadets are attuned to the chain of command and know what to do and how to respond in crisis situations. Indeed, the majority of APD and Academy leadership we spoke with questioned the suggestion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a "warrior" mindset, which leads to an "us vs. them" mentality of officers on the front lines fighting crime. Academy leadership and instructors we spoke with presented the view that, while it is important to emphasize the community-oriented skills of policing, the Academy must nevertheless instill in cadets the importance of following a strict chain of command and following orders in crisis situations. They further contend that this frequently requires the imposition of physical and psychological stress so that cadets are not faced with such high-stress situations for the first time while on the streets as sworn officers.

We agree that police officers can find themselves in life-threatening situations at a moment's notice and need to deploy swiftly and effectively to address a threat in the community. Human beings often like to take their time and weigh options and outcomes before acting. Police work sometimes does not give officers that opportunity. There are times when orders need to be communicated clearly and quickly about how to respond.

That said, a Gallup poll in the summer of 2020 reported that confidence in the police had fallen to 48 percent, which was the first time in the 27 years Gallup has tracked this issue that such a low level of public confidence in policing was recorded.[197] Clearly, the customers of policing are unhappy with the product police departments are selling; reforms are needed. If one thing is certain, it is that the community does not want a paramilitary training academy or a police department that employs stress-based, military-like tactics unless absolutely necessary.

There is a need to train officers for the job and tasks they will be required to perform. The majority of those tasks involve using empathy, tact, discretion, and integrity when communicating with citizens. Training that prepares officers for the limited number of outcomes that require them to utilize legitimately required military-like tactics, such as apprehending a terrorist bomber or addressing a sniper situation, should not dictate the foundation of a department's training program. Although Kroll believes in training officers to deal with real-world threats, which can include exercises that elevate a cadet's heart rate and induce the physical effects of being placed in fear and under stress, it is equally important to train officers for their everyday responsibilities and duties.

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[196] "Community Report: Austin City Council Resolution 66: Austin Police Department Training Video Review Panel" (January 18, 2021).

[197] Aimee Ortiz, "Confidence in Police is as Record Low, Gallup Survey Finds," *The New York Times*, August 2020, https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html

As noted in Section 4, police academies can establish a resiliency-based or guardian-centric culture which focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, however, resiliency-based training has been shown to have several positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression.[198] Strengthening cadets' critical decision-making skills, communication, and emotional intelligence skills is better associated with the skills and tactics necessary to handle the complex situations they are likely to face in the field. It is Kroll's opinion that this can occur without a paramilitary foundation.

"Warrior" vs. "Guardian". Although APD leadership dislikes the "warrior vs. guardian" terminology, the new Commander of the Academy said she believes APD should train its cadets to be "70% guardians and 30% warriors." "We are guardians, but we have to maintain a warrior mindset to stop immediate threats when they occur."

- As an example, the Commander suggested to consider an officer assigned to protect school children. The officer is there as a guardian, but if a school shooting occurs, the officer needs to be prepared to respond immediately, sometimes with military-style tactics pursuant to strict protocols and clear lines of authority. Although hopefully these tactics are rarely employed, officers need to be prepared to employ and execute such tactics in crisis situations, which can only be taught at the Academy.
- Other real-life examples include the attempted insurrection at the United States Capitol building on January 6, 2021. In situations like that, clear lines of authority are essential to ensure a safe and effective response to threats posed by violent mobs and criminals. As it happened, the U.S. Capitol Police as a unit was initially unprepared for the insurrectionary mob that charged the Capitol building that day. As a result, the chain of command broke down, resulting in the death of one officer and approximately 130 injuries.
- By contrast, on April 15, 2013, officers in Boston did not delay and deliberate over their response to the terrorist attack that occurred during the Boston Marathon. Command was quickly established, directions and orders were followed, and officers were deployed pursuant to a strict command structure. At a moment's notice, officers had to resort to tactics and procedures learned during their reality-based training exercises at the police academy, thereby saving dozens of lives.

The mere use of the terms "warrior" and "guardian" has led to increased tensions in policing. Community activists point to officers in tactical vehicles and SWAT uniforms performing tactical operations in an unnecessarily "militaristic" fashion. This criticism is justified when police departments deploy heavy-handed equipment and tactics unnecessarily, such as when SWAT teams execute no-knock search warrants for low-level offenders, or when the police arrive in full tactical gear to peaceful protests. Such aggressive tactics are overbearing and establish an unfortunate tone that police are looking for a confrontation. This dynamic in policing was first flagged as a potential concern as early as 1997, when a survey of all police departments serving cities of 50,000 people or more provided the first comprehensive national data on SWAT team deployments. Their findings documented a rise in the number of SWAT teams and the normalization of these units into mainstream policing.[199]

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[198] Rollin McCraty and Mike Atkinson, "Resilience Training Program Reduces Physiological and Psychological Stress in Police Officers," *Global Advances in Health and Medicine*, 1, no. 5 (2012): pp. 44-66.

[199] Peter B. Kraska and Victor B. Kappeler, "Militarizing American Police: The Rise and Normalization of Paramilitary Units," *Social Problems*, 44, No. 1 (1997): pp. 1-18, https://www.jstor.org/stable/3096870?seq=1.

Police departments counter that policing requires discipline, clear lines of authority, and asperity in dynamic and tense situations. Most officers do not agree with the perception that donning protective equipment and approaching potential life-threatening situations in vehicles designed to give them the best chance of protecting themselves, while ending a threat to the community quickly, is indicative of them waging war in the communities they serve. Certainly, no one would suggest that using an armored vehicle to approach the Austin bombing suspect was an unnecessary deployment of equipment. But the manner in which APD responded to summer protests in 2020 contributed to community perceptions of a tone-deaf department not responsive to community concerns.

In our conversations with APD personnel and the community, Kroll has found that both groups agree that officers should be professional caretakers—protecting people and serving the community respectfully and professionally. There is also agreement that, when faced with a dangerous situation in which officers are subjected to fear, anxiety, stress, and potential violence, officers must regulate their responses, apply a guardian-centric, resilient approach, and ensure that citizen interactions are conducted without bias.

Regardless of what terminology is employed, a department's training programs should be assessed on whether they prepare cadets in a resilience-based rather than stress-based approach to policing in an effort to develop resilient caretakers.

Elimination of Abusive Practices. Following the 141st cadet class, as a result of complaints from cadets and a series of cadet injuries that had occurred in several of the previous Academy classes, the Academy modified practices, such as "Fight Day" and Stress Reaction Testing (SRT), that had been deemed unnecessarily abusive. These modifications were made in an attempt to reduce cadet injuries, lower the rate of attrition (which disproportionately impacted females and cadets of color), and create an environment more conducive to success and graduation.

- "Fight Day" (subsequently "Will-to-Win") is part of defensive tactics training. Cadets initially run a lap around the track, after which they perform pushups and flutter kicks for approximately 4-5 minutes until called into the gymnasium, where they are required to jump rope. Cadets then don headgear and boxing gloves and punch a heavy bag for approximately two minutes. Three cadets are then selected to enter one of three boxing rings, where they each fight with a skilled and experienced instructor, who delivers a series of blows and punches at 40-50% intensity. The cadet is expected to fight continuously for three minutes and to perform through pain and exhaustion while continuing to fight. If the cadet stops fighting, the instructor continues to throw 40-50% intensity punches back at the cadet to encourage the cadet to fight back. Frequently, cadets have had no formal self-defense or hand-to-hand encounter training prior to this exercise.
- "SRT" or Stress Reaction Testing was modeled on military boot-stamp training and constituted a series of intense physical exercises combined with persistent yelling and screaming that occurred on day one or two of Academy and pushed cadets to their physical and psychological limits to see how they acted under extreme stress. The intent was to break down individual personalities and rebuild them as a unified team. This frequently resulted in several cadets dropping out and appeared to operate as a sort of hazing ritual to force out cadets who "could not take it."
- Following the 141st Academy class, "Fight Day" was changed to "Will-to-Win" and became more structured and controlled than in years past. However, although the name has changed, the essence of the exercise has not materially changed. It occurs prior to cadets being taught any self-defense or other hand-to-hand defensive tactics, which places them at a distinct, and arguably unrealistic disadvantage against skilled and experienced sparring instructors.

- APD believes it is essential that cadets who have not experienced being physically assaulted or punched before arriving at the Academy should experience this for the first time in an Academy-controlled environment, and not in a hostile situation while on patrol after graduation.
- Kroll notes, however, that APD personnel were unable to provide a persuasive rationale as to why such an exercise could not reasonably occur towards the end of Academy after cadets have received all essential defensive tactics training.[200]

- Two male staff members (an instructor and a supervisor) who were the most abusive during "Fight Day" (prior to the 142nd Academy class), especially to female cadets, have been removed from the Academy and replaced with more appropriate instructors. The Learned Skills Unit now has a highly regarded (within APD) female sergeant and African American corporal in supervisory roles.
- The Academy has eliminated SRT, which frequently resulted in injuries, dehydration, and forced resignations. Because Academy leadership determined that cadets were not being provided the tools to succeed and must be allowed to build physical capacity gradually, SRT was replaced with team-building exercises (TBX).
  - According to the lesson plan, the goal of TBX is "to create a physically and mentally stressful environment through exercise and problem solving," which "will serve as an important introduction to the importance of teamwork and the need for strong leadership in law enforcement" consistent with the "philosophy, values, vision, and mission of the Austin Police Department."
  - TBX occurs later in the Academy, which allows time to have cadets enhance their physical fitness levels before completing the team-building exercises. Although cadets are still placed under physical and psychological pressure to finish the tasks, TBX is a much-improved way to create the skills needed of officers to react under pressure while unifying individual personalities into a team without the humiliation and other components of military boot-camp training.
- The Academy has also eliminated a steep hill climb that was used for SRT and disciplinary purposes and which caused a lot of ankle injuries. This has been replaced by modified discipline that requires cadets to carry a 15 or 20-pound sandbag to classes for a day if they fail an exercise, as well as collective discipline (behavioral modification exercises) in which all cadets perform extra physical fitness drills when any one cadet fails (this occurs in the first trimester of the Academy as a way of demonstrating that one officer's mistake affects all officers).[201]

Officer Wellness. The Academy has attempted to provide transparent and effective support mechanisms for its cadets through several wellness-related services, including the following:

- In the first week of the Academy, Director of Officer Wellness, Rick Randall, provides overall information on the officer wellness programs.

[200] In interviews with civilians who had accompanied APD officers on ride-alongs, it was noted that one officer commented that, if a physical conflict were to occur, he was going to "win" the encounter. Statements such as these give the impression of a "warrior" mindset among APD patrol officers.

[201] These collective discipline sessions are sometimes referred to as "smoke sessions."

- At orientation, the Police Chief speaks about the importance of self-help and how to access department wellness services; the Commander gives the same information to family members who attend the academy orientation session with their loved ones.
- During weekly staff meetings, Academy leadership reviews the cadets' progress in major areas of academics, physical training, learned skills, and emotional well-being.
- In several documented instances, staff members have referred cadets experiencing coping issues, mental stress, or distress during the Academy to psychological services and the peer support unit.

5.3 Teaching Methods / Adult Learning

Adult Learning Methods. The reports completed by Dr. Villanueva in May 2020 and Dr. Ferguson in April 2021 affirmed the need for the Academy to better develop and incorporate adult learning theories into its curriculum and teaching methods and to move away from the rigid, formalistic, lecture-and-listen format that dominates many Academy classroom courses.[202]

- Although Academy instructors have been revising course content and lesson plans in preparation for the 144th cadet class, and submitting such content for supervisory review, until recently the primary focus has been on ensuring that all course content is compliant with the state-mandated Texas Commission on Law Enforcement (TCOLE) and Basic Peace Officer Certification (BPOC) requirements. Course revisions and updates were not directed at incorporating adult learning and other effective teaching strategies. Academy staff was awaiting guidance from Dr. Villanueva's replacement (see below).

Hiring of New Division Manager. On March 15, 2021, the Academy officially hired and onboarded Dr. Anne Kringen to replace Dr. Villanueva in her role as Organizational Development and Training Manager. Dr. Kringen most recently was Associate Professor of Criminal Justice at the University of New Haven. A police officer before she pursued her Ph.D. in Criminal Justice at Texas State University, her research interests are in Policing, Gender in the Criminal Justice System, Organizational Policy, and Criminal Justice Administration. In her published writings, Dr. Kringen has explored such topics as mental illness stigma and the limitations of crisis intervention, gender imbalances in policing, learning community policing through community engagement, the role of Civil Service Commissions on police diversity, and identifying barriers to Black applicants in police employment screening, among other topics.

- Dr. Kringen's official position at the Academy is Division Manager. On March 30, 2021, Interim Chief Joseph Chacon spoke with Academy staff and instructed them that Dr. Kringen has the same authority as Commander and that her instructions and recommendations must be complied with moving forward.
- One of Dr. Kringen's top priorities is to immediately work with instructors to ensure that (1) all lesson plans are updated, (2) content is current and corresponds appropriately to the objectives of the course, and (3) that adult learning and innovative teaching techniques are incorporated throughout Academy training.

[202] Dr. Ferguson's report specifically focused on course content for the following courses: Cultural Diversity, History of Policing, Professionalism and Ethics, Fair and Impartial Policing, Services for the Deaf and Hearing Impaired, Multiculturalism and Human Relations, Spanish, Transgender, LGBTQ, and Racial Profiling.

- On April 1, 2021, Dr. Kringen provided Kroll with an outline of her plan to work with instructors to update all course content consistent with the above three criteria. Once the content is sufficiently updated, she will review at least two lesson plans for each instructor to provide feedback and direction on conducting Phase Two reviews, which will ensure that:
    - Each lesson plan includes diversity, equity, and inclusion (DEI) content. Lesson plans that do not relate to DEI content must be verified by staff identified by the Division Manager.
    - Each lesson plan includes graphs or infographics that present ideas visually.
    - All PowerPoints comport to Ratcliffe's PowerPoint guidelines.[203]
    - Any material removed from PowerPoints is incorporated into handouts to be made available to cadets weekly, and that information included in both the handouts and the PowerPoints are consistent.
    - Each lesson plan includes assessments (graded or ungraded) for each learning objective.
    - Each lesson plan includes endnotes for content used to fulfill each learning objective (for each section) so content can be checked for accuracy and older content that should be updated can be identified easily. All TCOLE content is to be identified to indicate which content areas cannot be modified or deleted.
    - Each lesson plan includes at least one current event or local example that is relevant to each unit goal.
- Dr. Kringen will also be exploring Academy culture and helping to find the proper balance between academic-style learning, physical and tactical training, disciplinary measures, and chain-of-command structures.

Teaching Seminars. A majority of Academy instructors and supervisors attended two teaching seminars towards the end of 2020 that addressed how to more effectively present course content and teach in ways that enhance learning. In particular, Academy instructors and supervisors attended:

- A teaching symposium in December (co-led by Drs. Ferguson, Villanueva, and Sloan) that provided additional guidance on adult learning methods as applied to courses related to diversity, equity, and inclusion;[204] and
- A Transformational Training seminar led by a team of instructors at Command Presence (https://commandpresence.net/), a police instructional training firm. The 8-hour seminar provided ideas and methods for evidence-based teaching methods designed to counteract "death by Power Point" and other uninspiring teaching techniques. This was well-received by Academy staff, and the Academy plans to require this training annually for all Instructors.

Role Plays and Scenario-based Content. Academy instructors with whom Kroll spoke noted that many Academy courses already include a lot of scenario-based and role play content that effectively teaches cadets how to apply what they are learning. For example, de-escalation, criminal law, and critical incident training each include several role-play scenarios. Critical incident training examines scenarios involving bipolar disorders, emotional depression, intellectual disabilities, and paranoia and hypervigilance. De-escalation training, including verbal de-escalation techniques, as well as criminal law training, applies role

[203] https://www.jratcliffe.net/post/ten-basic-tips-for-powerpoint-presentations.

[204] According to Dr. Ferguson, although many instructors expressed openness to further transitioning to an adult learning environment, the feedback from the symposium was disappointing (survey results were mixed with only nine surveys completed).

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plays to scenarios involving family disturbances, the "button pusher," an irate person in a civil dispute, the agitated driver, the passenger who tries to interfere with a driver arrest, and several others.

- While role playing is an important active learning technique, adult learning concepts involve more than simple role playing. The importance of updating the curriculum to incorporate modern and effective teaching methods that include open discussion, critical thinking, and active learning techniques is essential to overcome the passive lecture and listen techniques that have dominated a lot of Academy instruction in classroom-based classes.

Updated Instructor Job Descriptions. At the recommendation of Dr. Villanueva, the Academy recently revised Academy Instructor job descriptions to include appropriate expectations, duties, and responsibilities around teaching effectiveness. The revised job descriptions set forth the duties and responsibilities of Cadet Training and Learned Skills instructors, as well as Assistant Field Training Officers, including the need to model "professional behavior and communication," exhibit "appropriate behavior, language, demeanor, and dress," utilize "procedural justice practices, such as treating citizens with respect and decision making based on facts instead of biases, to achieve and maintain effective community policing," and maintain an "appropriate and professional classroom atmosphere and training environment to engage students and facilitate learning."

- The job descriptions have also tailored a comprehensive list of knowledge, skills, and abilities that each instructor must have to teach at the Academy, including the following:
    - Interest and commitment to teaching and learning
    - Knowledge of teaching strategies
    - Knowledge of adult learning theory
    - Ability to use a variety of instructional techniques, including lecture, assigned reading, group and individual assignments, conferences, debates, discussion groups, panels and seminars, simulations, case studies, and role play
    - Ability to communicate in ways that display empathy and understanding with other city employees and members of the community
    - Ability to apply emotional intelligence skills to understand and collaborate with members of the community to improve public safety, resolve issues, and build trusting relationships
    - Knowledge of effective community policing strategies and practices
    - Knowledge of the diverse cultural groups that make up Austin, Texas, and their unique concerns when it comes to law enforcement
    - Knowledge of appropriate techniques for deescalating situations and contacts
    - Skill in establishing and maintaining effective working relationships with the diverse cultural and social groups in Austin, Texas
    - Skill in appropriately utilizing listening and verbal abilities to maintain professionalism during difficult interactions with law enforcement

Scheduling in 40-hour blocks. The schedule for the 144th cadet class initially included large blocks of time devoted to such courses as Penal Code (40 hours in Week 3), Arrest Search and Seizure (40 hours in Week 5), and Traffic Code/Crash Investigation (40 hours in Week 7), which requires instructors (often the same instructor) to teach non-stop for much of that time, and cadets to absorb a huge amount of

information in a condensed period of time. Instructors lose some of their ability to effectively communicate as the time goes by. Cadets receive a large amount of new and technical information without time to effectively digest it. If they have concerns and need additional follow-up, there is no time to do so the next day or after class, as each day has a full load of new material to be presented.

Spreading out the courses with more frequent test taking could better enable cadets to learn from their mistakes and correct them when tested again on that information. Some students are sound oriented with the ability to hear an instructor present a lecture and retain it. Others are visually oriented and need to read the text, see videos, take notes, and review the learning to absorb the information. Large chunks of information are better distributed in shorter periods for a longer length of time. This would also provide instructors the ability to better address how the course fits into the overall mission of ethical policing and allow for more discussion by gradually building onto the foundation of the previous instruction.

An example could be learning in the morning session the law on when an officer can make a threshold inquiry pursuant to *Terry v. Ohio* based on reasonable suspicion. The next class could instruct recruits on how tactically to make such an approach along with when officers can conduct a frisk and when they cannot. This could be followed up with the rules and procedures of reporting a stop, coupled with appropriate report writing skills. Each instructor could build off the other. It would allow each instructor to weave in class discussions about professionalism, ethics, and integrity, and help ensure training is consistent with department and community values.

We understand that police training in the state of Texas comes under the purview of the Texas Commission on Law Enforcement (TCOLE), which sets the required minimum training an academy must cover so that cadets are eligible to take the state certification exam upon graduation. TCOLE recommends not only how the information should be presented and sets learning objectives for each course of instruction, but also recommends the sequence in which the course material should be taught. However, TCOLE allows academies to change the sequence, if necessary.

Kroll Interviewed the TCOLE leadership team, which explained that they recommend the order of instruction based on past success of that curriculum in preparing cadets to pass the TCOLE exam on their first attempt. When Kroll informed TCOLE of our suggestions for modifying the 40-hour blocks of course content at the Academy, TCOLE said it would have no concerns with changing the strict sequencing of instruction, but believed to effectively do so, some of the courses may require more time to present. TCOLE noted that, while it would need to make sure the manner of the presentation continued to meet all the course learning objectives, its evaluation of the Academy would continue to depend on the Academy's first-time pass rates on the state certification exam.

Use of Outside Content Experts. Kroll found that APD has historically been reluctant to incorporate a lot of community and civilian input into its training programs and many Academy instructors and supervisors are somewhat distrustful of non-police personnel (including academic experts) when it comes to advising on training methods. However, Academy leadership has expressed a willingness to work with outside academic content experts from local colleges and universities in appropriate courses, such as the History of Police and Race in America (see discussion below). Moreover, the new Division Manager is currently reviewing course content and meeting with instructors to determine which courses—particularly DEI-related courses—are most appropriate to be co-taught with an outside subject-matter expert. This will also be a consideration of the newly formed Academy Curriculum Review Committee, discussed below.

Academy Curriculum Review Committee. One of the initial priorities of Dr. Kringen as the new Division Manager is to establish an Academy Curriculum Review Committee (Committee), which will help evaluate the content of each DEI-related course at the Academy and determine, among other things, which courses

may benefit from subject-matter experts and other outside perspectives. The Committee will be comprised of Dr. Kringen (Division Manager), the Training Supervisor (once hired), selected members of Academy staff, two outside academic experts, and four community representatives. The staff members will include, in addition to Dr. Kringen and the new Training Supervisor, at least two instructors with specific knowledge of some of the key courses to be evaluated. The Committee will start by examining course content for the DEI-related courses of most concern to the community, as well as some of the Learned Skills content to ensure that DEI objectives are incorporated throughout the entire Academy training process.

Learning Management System. Academy leadership is currently in the process of selecting and purchasing an automated Learning Management System (LMS) to help facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure compliance with state-mandated TCOLE- and BPOC-requirements, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work, and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class. Once implemented, the LMS software will allow Academy staff to have a state-of-the-art, best-in-class curriculum planning tool.

- Kroll notes that APD is in the process of finalizing the selection of a vendor and procurement of such a system, with final implementation planned for October 2021.

5.4 Cultural Competency Training / DEI Content

Curriculum Review. Kroll examined the lesson plans, curricula, and teaching materials provided by Academy staff for each of the courses which broadly address issues pertaining to diversity, equity, and inclusion (DEI), as well as police-community relations and other matters that, broadly speaking, address cultural competency. Specifically, Kroll conducted a gap analysis of the below courses:

1. The History of Police and Race in America (newly added course)
2. The History of Policing (conventional course)
3. Cultural Diversity
4. Professionalism and Ethics
5. Fair and Impartial Policing
6. Multiculturalism and Human Relations
7. Interacting with Transgender Individuals
8. Law Enforcement and the LBGTQ+ Community
9. Racial Profiling (Biased Based Policing)
10. Law Enforcement Survival Spanish
11. Interacting with Individuals who are Deaf or Hard of Hearing
12. Traumatic and Acquired Brain Injuries

We also reviewed and considered the curriculum review report of Dr. Miguel Ferguson that was finalized and submitted on April 5, 2021. Kroll agrees with Dr. Ferguson's Level I and II recommendations, which have essentially been incorporated into our recommendations in Section 7.[205] Moreover, consistent with Dr. Ferguson's recommendations to incorporate more adult learning content throughout Academy training,

[205] Dr. Ferguson's Level III and IV recommendations are for the City's and APD's long-term considerations.

Kroll recommended as a short-term measure in our preliminary report of February 26, 2021, that the City of Austin immediately hire a replacement for the Organizational Development and Training Manager position to assist Academy staff in implementing and incorporating adult/active learning models throughout the identified DEI-related courses. The Academy filled this position on March 15, 2021, with the hiring of the Division Manager.

We provide a brief description and analysis of the DEI-related and cultural competency courses below.

The History of Police and Race in America

In an effort to provide historical context to community perceptions of the APD and policing generally, the Office of Police Oversight collaborated with the University of Texas School of Law to develop *The History of Police and Race in America,* an eight hour course that will be taught for the first time at the Academy during the 144th cadet class. The course was submitted to then-Chief Manley in March 2020 and subsequently endorsed by Dr. Villanueva, who believed that including the course in Academy training would ensure that "diverse perspectives are being presented when learning about police history in context."[206]

By tracing the history of policing from its colonial origins to modern times, the course illustrates how police agencies have historically subjugated racial and ethnic minorities in the United States, with a specific lens directed at Austin. The course curriculum is designed to inform cadets about the historical forces underlying modern perceptions of the police among communities of color, as well as help cadets better understand and empathize with the diverse communities they are called to serve.

The course is organized into five parts. First, students are asked to reflect on their own views of policing by exploring how their lived experiences and personal interactions with the police have shaped their views of policing. By noting these experiences on a handout and sharing them in small groups, students learn of the many ways in which views about policing become fixed in people's minds, and that such views differ depending upon one's experiences. Second, students participate in a short competitive activity in which one group is given a significant advantage over other groups. At the end of the activity, instructors explore with the students how it feels to compete with unequal resources. Third, instructors present a PowerPoint on the history of police in America, drawing a direct line between colonial slave patrols and mass incarceration today. The presentation examines the racist origins of formalized police departments in the United States generally and Texas specifically, and discusses the violence and injustice historically perpetrated against minorities, police involvement in lynching, the aggressive enforcement of Jim Crow Era Laws, and the over-incarceration of people of color. Cadets are exposed to the historical realities that influence how some community members continue to perceive the police today. Fourth, students are asked to actively engage with specific flash points that have created tensions between APD and the Austin community from post-reconstruction to modern times. Reading about these cases and answering critical questions pushes students to emotionally engage with and understand the troubling and violent role that the police played in each of these flash points. Finally, students are asked to reflect on the course by writing their thoughts and engaging in conversations about how they can use this information to change the narrative of policing moving forward.

Kroll believes that this course, which will be co-taught by a local academic subject matter expert[207] and an African American APD sergeant, and which fully embraces adult learning methods, is a valuable and

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[206] APD Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020).

[207] At present, the Academy is in discussions with Dr. Courtney Robinson, an Adjunct Professor at Huston-Tillotson University and the Founder of the Excellence and Advancement Foundation in Austin, to co-teach this course. The Foundation uses innovative programming to address critical community needs and works to transform how communities combat the school to prison pipeline.

important addition to the Academy's curriculum that will help counter the perception that law enforcement is reluctant to address difficult and troubling facts about its past. By understanding the history that impacts community perceptions, cadets will be better prepared to deal with the complex realities of policing in a diverse urban environment, while better understanding how their presence and authority is sometimes perceived.

The History of Policing

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan for this course was last updated and approved by an Academy supervisor on October 30, 2019.

This course covers the historical development of police service models in the United States from 1900 through the present, including how the English system of law enforcement influenced policing in the United States. Students also learn about the evolution of policing in Texas.

Students learn that community policing is an APD organizational strategy that allows the police and community to work closely together to solve the problems of crime, including fear of crime, physical and social disorder, and neighborhood decay. Students also learn that community policing stresses exploring new ways to protect and enhance the lives of those who are most vulnerable: juveniles, the elderly, minorities, the poor, the disabled, and the homeless. This effort encourages the police and law-abiding people to work together with mutual respect and accountability.

The course also covers how APD currently engages the community through calls for service, directed patrols in high crime areas, addressing community quality-of-life issues (e.g., littering, excessive speeding areas, prostitution, etc.), the use of District Representatives that work exclusively in their assigned communities, Operation Blue Wave (community foot patrols), and such initiatives as "Coffee with a Cop."

Although the course content is fine for what it attempts to do, it should not be considered part of the overall DEI content of the Academy, as there is little emphasis in this course on issues pertaining to equity, race, ethnicity, and other DEI content. Those areas are more adequately covered in the above-noted course on History of Police and Race in America.

Dr. Ferguson has recommended that APD update the curriculum for this course and use content experts in its development. However, much of the updated content referenced by Dr. Ferguson is covered in The History of Police and Race in America (see above), which will be co-taught by a local subject matter expert. That course was prepared and developed by content experts at the University of Texas Law School. Accordingly, the History of Police and Race in America, which complies fully with Dr. Ferguson's recommendations, should replace the History of Policing as DEI-related training. The History of Policing can be taught as a traditional training course outside of the core DEI courses.

Cultural Diversity

This class is taught by a TCOLE-certified instructor and is scheduled for eight hours. The lesson plan was approved by an Academy supervisor on October 30, 2019. The previous lesson plan was prepared on July 7, 2010, and last revised on August 14, 2013 (according to APD documentation, there is no indication that this earlier lesson plan was reviewed and approved by an appropriate Academy supervisor). Although the current lesson plan contains some revisions and reformatting, it is otherwise nearly identical, based upon a side-by-side review with the 2013 version.

The purpose of this training is to increase cultural awareness and understanding and help cadets develop skills that will refine positive communication within a diverse community.

Kroll notes that the current lesson plan is not substantially different than the outdated version. For example, as with the lesson plan revised in 2013, the current lesson plan contains a reference list of articles on page

40 dating from 1996 to 2008. One of the listed references is to Multicultural Law Enforcement: Strategies for Peacekeeping in a Diverse Society (4th Edition 2008). However, since 2008, three additional editions of this book have been published, with the 7th Edition printed on January 31, 2018 that would likely contain references to more recent issues facing the law enforcement profession and the communities they serve.

The introduction section of the lesson plan contains unhelpful negativity in explaining the difficulty of interacting in a diverse community or organization. The course also presents as somewhat abstract, intellectual, and dry in several areas. If this course is shown in PowerPoint it would be particularly dry and not memorable for students. The content should be reviewed and revised to make it more engaging.

This lesson plan is essentially identical to the 2013 version with no updates included, except for some minor re-formatting and structural changes. We highlight a few sections below as an example (this is not an exhaustive list):

> **The Challenge of Diversity:** This section notes that dealing with diversity can be at times "insurmountable" and discusses abstractly the "Seven Underlying Principles of Diversity." We found this verbiage in the training negative and not conducive to a positive emphasis on diversity from an organizational perspective.
>
> **Lesson Objective 1.1:** To increase awareness of the various dimensions of diversity, this section is too abstract, dry, intellectualized, and impractical for students.
>
> **Lesson Objective 1.3:** Discuss the term "human diversity" – the list included under this section was limited to cultural, racial, and ethnic references and should be expanded to include such things as religious affiliation, gender, gender identity, sexual orientation, language, mental capabilities, marital status, socio-economic status, and disabilities.
>
> **Lesson Objective 1.4:** List "dimensions of diversity" – this section is too abstract, impractical, and not memorable for students.
>
> **Lesson Objective 1.11:** Describe the Concept of the Four Layers of Diversity – such abstract concepts are difficult to remember and not useful to improving future behavior.
>
> **Lesson Objective 2.9:** Describe the Cultural Orientation Model – this section is too abstract, impractical, and not memorable for students.

On a more positive note, the lesson plan does include several scenarios and problems/exercises that appear informative and useful with practical application.

We recommend that APD work with Dr. Kringen and outside subject matter experts to revise this course by making it more engaging and incorporating adult learning methods into the instruction. If necessary, the time allotment to facilitate the updated lesson plan should be expanded or adjusted as appropriate. Students need to understand the organizational case for diversity and learn to effectively interact in a diverse workforce and community.

In his curriculum review report, Dr. Ferguson reviewed the six-module online course offered by TCOLE. He opined that these modules of instruction are a case study in ineffective training and offered several reasons in the Summary section of his analysis on this topic. However, Dr. Ferguson's report does not address the Academy lesson plan (discussed above) that APD submitted to Kroll for review. As noted, we have identified gaps and weaknesses in the above lesson plan and recommended revisions to the training material.

Multiculturalism and Human Relations

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on March 11, 2021.

The course examines the definitions, key concepts, and origins of prejudice, and explores the differences between implicit bias, explicit bias, and stereotyping. Students learn that the role of the peace officer includes enforcing laws impartially and treating all persons equally, including criminal justice personnel, who are equally subject to the laws that apply to everyone else. Students also learn the importance of cross-cultural communications and that, in a multicultural society like the United States, police officers must understand how to facilitate dialogue and reduce conflict.

The course covers the power of the U.S Department of Justice to investigate and prosecute bias-motivated violence in which the perpetrator selects the victim due to his or her actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. The course also examines APD's policy on hate crimes, which includes the procedure for investigating and reporting hate crimes.

Although the purpose and intent of this course is important and essential to effective police training, APD's current lesson plan for this course has a negative overall connotation. Bias, discrimination, stereotyping, and prejudice need to be more deeply taught so that students learn to better manage their inherent biases.

The following sections should be reviewed and revised for the following reasons:

> **The Functions of Prejudice** section is incomplete. Bias is born of necessity. Students must understand why it is part of human interpretation of the surrounding world, how it can be identified, and how it can be managed. Willingness is a key requirement as well. When students are taught that bias is part of the human condition, they are more willing to manage it.
>
> **The Four Basic Feelings or Attitudes Harbored by Most Prejudiced Persons** section needs more context. This section should be presented and taught in a way so that biases can be managed and not be taught in a manner that suggests people who are prejudiced are inherently "bad."
>
> **Lesson Objective 4.1**: The purpose of this lesson is to have students discuss the value of, respect for, and sensitivity to the feelings and needs of others. However, the sub-section on "important skills that should be used" lists skills that should be considered or used by the student, but it provides no learning objectives on how students can develop these skills.
>
> **Section III. APPLICATION STAGE**: This section of the course allows students to discuss their personal racial/ethnic group and provide introspection by asking and answering a series of questions. We believe this exercise is flawed and in need of revision. Not all people hold beliefs about their racial/ethnic group; some are more individualistic, and some are aligned with different groups (e.g., on economic classifications).
>
> We recommend that APD work with the new Division Manager and subject matter experts outside of the Academy to revise the Multiculturalism and Human Relations course and incorporate adult learning methods into the instruction. The time allotment to facilitate the updated lesson plan needs to be expanded or adjusted as deemed appropriate. This course should ultimately help students identify and manage their own biases before they interact with the public as a member of the department.

Dr. Ferguson agrees with Kroll that this course curriculum and lesson plan needs revision. Kroll agrees with Dr. Ferguson that, once the DEI courses are updated, there will be opportunities to reduce redundancies across the courses, excluding occasions when instructors wish to reinforce a learning objective. Kroll recommends that Academy instructors, in consultation with the Division Manager, consider other ways to reinforce the learning objectives without using the same lesson plan verbiage or scenarios from other course materials. As Dr. Ferguson confirms, this course needs more adult learning incorporated into how the material is presented to cadets.

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Professionalism and Ethics

This class is taught by a TCOLE-certified and Ethics train-the-trainer Instructor and is scheduled for ten hours of instruction. The lesson plan for this course was last updated and approved by the Academy on January 14, 2021.

This course teaches that the primary responsibility of law enforcement in general, and the individual officer in particular, is to protect the people of the United States through upholding and enforcing the law. Students discuss ethical dilemmas in law enforcement and explore ways to address difficult situations. Students will become familiar with civil and criminal laws that govern a peace officer's conduct, as well as civil penalties for sexual harassment and other inappropriate behavior.

Students learn that the community's perception of its police department is influenced by how open and accessible the agency is to handling citizen complaints and policing itself. The importance of police legitimacy and procedural justice is also reinforced, including the four pillars of (1) fairness and consistency, (2) giving voice to all parties, (3) transparency and openness to the process, and (4) impartiality and unbiased decision making.

Students will become familiar with the APD Law Enforcement Canons of Ethics that was adapted from the International Association of Chiefs of Police and APD General Orders (Kroll notes, however, that no APD General Orders are cited in this lesson plan).

The scenarios used in this course primarily include the following discussion topics:

1. Identify the ethical dilemma.
2. Discuss the difference in perceptions.
3. Discuss the possible personal consequences.
4. Discuss the possible professional consequences.

The lesson plan does not incorporate how the above four points link to relevant APD policies. It is important that students are trained on relevant APD policies that require them to intercede (which applies specifically to sworn officers) and to report violations of law or policy (which applies to all employees). The lesson plan only mentions the APD General Orders on one occasion (in parenthesis under the heading: "Law Enforcement Canons of Ethics"). This lesson plan should include relevant APD policies in the General Orders Manual under Section 200: Response to Resistance, and Section 900: General Conduct and Responsibilities. The revised lesson plan should also include instruction specifically relating to the following subsections:

> On November 12, 2020, APD issued *General Order 200.1.3: Duty to Intercede*, which states: "Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor." This new requirement is an active "Bystander" mandate for which every APD officer must receive training. This important training topic is not listed in this lesson plan.
>
> *Section 900, Sub-section 900.2: Required Reporting of Violations.* APD employees (civilian and sworn) have the responsibility to report criminal activity by other employees or any breach of APD written directives (policy). This policy outlines the protocol to report criminal conduct by written memorandum to APD Internal Affairs, APD Special Investigations Unit, or any supervisor in their chain of command. Additionally, employees are required to report any employee known to have violated an APD rule, regulation, or order to their immediate supervisor. This policy also mandates

what action the Supervisor shall take in accordance with General Order 902: Administrative Investigations.

Section 900, Sub-section 902.1: Confidentiality. All information relating to an employee's suspected criminal act or General Order violation is confidential with certain articulated exceptions.

Section 900, Sub-section 900.2.2: Retaliation Prohibited. Employees are prohibited from retaliation against any defendant, complainant, witness, victim, investigator, or in any other related capacity.

The policies mentioned above are vital in managing risk to the department and enforcing employee ethical responsibilities by requiring all APD employees to report misconduct, criminal and administrative. For those employees who fail to do so, there are levels of accountability built into the disciplinary process to correct and address this behavior (as noted, the Duty to Intercede policy applies only to sworn members of APD).

Kroll notes that APD is currently evaluating bystander training provided by Georgetown University, i.e., "Active Bystandership for Law Enforcement (ABLE) Project,"[208] to prepare officers to successfully intervene to prevent harm and create a law enforcement culture that supports peer intervention. APD is also considering the New Orleans Police Department EPIC[209] peer intervention program that teaches officers to successfully intervene and which establishes protections for those officers who intervene. We commend the department for examining these programs and urge APD to adopt one of them, consistent with best practices.

Dr. Ferguson agrees with Kroll that the curriculum and lesson plan for this course needs revision. Kroll identified several gaps in the training and agrees with Dr. Ferguson that content experts would be helpful in updating this course of instruction.[210]

Fair and Impartial Policing

This class is to be taught by a TCOLE-certified instructor who is also certified as a COPS (Office of Community Oriented Policing Services, U.S. Department of Justice) – Fair and Impartial Policing instructor. This course is scheduled for ten hours of instruction. The lesson plan was most recently updated and approved by the Academy on March 24, 2021.

The Academy included this training into its curriculum in 2017 after receiving training from COPS subject matter experts in October 2016. The training is designed for cadets, patrol officers, and first-line supervisors and includes an instructor's guide, recruit patrol curriculum and training resources, and supervisors' curriculum and training resources. The training covers implicit bias and cultural sensitivity. The training applies the modern science of bias to policing and attempts to give officers the information and skills they need to reduce and manage their implicit biases. The curriculum addresses not only racial and ethnic biases, but also biases based on gender, sexual orientation, religion, and socio-economic status.

The training reference materials include a Fair and Impartial Policing lesson plan, as well as the COPS lesson plan in accordance with the APD Lexipol (General Orders) Policy Manual. The goal of the course is to provide TCOLE mandated training to the entire department so that all sworn officers in APD enforce the law equally to everyone in the community.

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[208] Active Bystandership for Law Enforcement (ABLE) | Georgetown Law

[209] http://epic.nola.gov/home/

[210] Dr. Ferguson mentions in his report this is a twelve-hour block of instruction. The updated lesson plan provided to Kroll by APD indicates the course is allotted for ten hours of instruction.

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Due to the proprietary nature of the COPS Fair and Impartial Policing curriculum, this course is required to be completed in its entirety using only the training materials provided pursuant to the COPS program. The materials reviewed appear to have been developed in 2013. Overall, as this curriculum/lesson plan was created by the COPS office subject matter experts, its basic content appears acceptable as an essential DEI-related course in the Academy.

Kroll notes, however, that the training curriculum for this course is proprietary to the COPS office and any training material in addition to what has been already provided may require authorization from the developer. Kroll recommends that Academy staff discuss Dr. Ferguson's Level I and II suggestions with the COPS office to determine how his course suggestions might be accommodated.

Interacting with Transgender Individuals

This two-hour class is taught by an APD officer who identifies as transgender and is a subject matter expert with personal experience engaging with the transgender community. The instructor developed this training and helped revise the APD's transgender policy with assistance from a transgender police officer in San Francisco. The lesson plan was last updated and approved by the Academy on January 22, 2021.

The course helps students understand what it means to be transgender and addresses some incorrect myths and stereotypes that surround the transgender community. Students learn the relevant terminology currently used in the transgender community and what words/terms may be outdated or offensive, especially as applied in the context of law enforcement and community policing.

Students are also taught best practices, such as APD's policy on community policing and searches regarding the transgender community and police interactions with members of the transgender community. Students also learn to identify when an attack on a transgender person may be a hate crime, as well as statistics on current discrimination practices and suicide rates among transgender individuals.

This course is an excellent introduction to issues involved with policing in the transgender community. Moreover, that it is taught by a subject-matter expert who happens also to be a police officer provides a positive impact on new cadets. However, this course should be provided on a department-wide basis so that it is not restricted to new cadets.

Kroll agrees with Dr. Ferguson's Level I and II recommendations to ensure this course includes current information and updated data and to incorporate the other active learning suggestions provided.

Law Enforcement and the LGBTQ+ Community

For the past several years, this class has been taught by Sergeant Michael Crumrine, the President of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement. Sgt. Crumrine is deeply knowledgeable about LGBTQ+ sexual and intimate partner violence investigations and has a solid understanding of the issues in cases involving LGBTQ+ victims and suspects. For the 144th cadet class, this course will be co-taught by Sgt. Crumrine and a female instructor who is also a subject-matter expert on LGBTQ issues and active in the LGBTQ community. Although this course was originally scheduled for three hours of instruction, it was recently reduced to a two-hour course. The lesson plan was last updated and approved by the Academy on January 6, 2021.

The course helps students incorporate some of the current, relevant terminology used in the LGBTQ community, especially as it applies to their role in law enforcement. The course covers some of the challenges faced by members of the LGBTQ community and addresses significant historical events that have shaped perceptions of law enforcement within the LGBTQ+ community. Consistent with what is also addressed in the transgender course noted above, the instructors will address what it means to be

transgender and how to respectfully interact with transgender individuals using preferred names and pronouns.

The course also addresses some of the unique barrier's that LGBTQ crime victims face when reporting to law enforcement, particularly concerning sexual assault crimes and intimate partner violence. Students are taught best practices when engaging victims to help overcome these barriers. Students are also taught some of the power and control tactics unique to LGBTQ+ sexual and intimate partner cases, as well as techniques they can utilize to help determine the aggressor in these cases.

Additionally, students are instructed on what constitutes sexual and intimate partner violence in the LGBTQ+ community, and the course examines some common myths and biases associated with violence in the LGBTQ+ community. Students are also educated on the neurobiology of trauma and how trauma can affect memory and recall in sexual and intimate partner violence cases.

This course is an excellent introduction to issues involved with policing in the LBGTQ community and a good supplement to the transgender course noted above. Moreover, that this course will be co-taught by two subject-matter police experts (male and female) is excellent. In future cadet classes, APD may wish to consider including an outside speaker from the LGBTQ community and potentially expanding the length of this course, especially in light of the robust LGBTQ community in Austin. This course also should be provided on a department-wide basis so that the content taught is not restricted to new cadets.

Kroll agrees with Dr. Ferguson's suggestions to update reference materials for this course where appropriate and to minimize redundancies with the Transgender course to increase time for active learning exercises (consistent with Kroll's short-term recommendation). Dr. Ferguson also suggests the addition of basic technology for use in the instruction.

Racial Profiling (Bias-based Policing)

This class is required to be taught by a TCOLE-certified Instructor with experience in the topic area and/or a subject matter expert. It is currently scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on December 11, 2020.

This course covers current departmental policies regarding racial profiling and includes a discussion of Supreme Court and other court decisions involving appropriate actions in traffic stops. Students are taught the legal definition of racial profiling and learn to identify the elements of both appropriate and inappropriate traffic stops. Students are specifically trained on APD *General Order 328: Racial or Biased Based Profiling Policy*, in its entirety.

Students also receive instruction on TCOLE's requirements on mandated department policy, data collection, and required training for new Chiefs of Police; however, these topics are not germane to the basic training requirements of police cadets, who need to become equipped to fairly and without bias enforce laws regarding police encounters with pedestrians and during traffic stops.

The core topics for racial profiling training should include, in addition to the relevant departmental policies and court decisions: (1) history of citizen complaints concerning racial profiling and the police training that initially led to this practice, (2) more behavior than just traffic stops – including stop, question, frisk, and other proactivity, (3) a focus on search and seizure that specifically discusses the variations across race and ethnicity in the rates of all searches, consent searches, and seizures, and which highlights the behavioral components of suspicion that may be inaccurate and are not race-neutral. We recommend the Academy revise this lesson plan to include, at a minimum, the core topics noted above to ensure that students learn the information necessary to eliminate racial profiling as sworn officers in the field. For the

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sake of efficiency and consistency, the Academy may want to consider linking the Racial Profiling core topics recommended into its Fair and Impartial Policing lesson plan.

Dr. Ferguson agrees with Kroll that this curriculum and lesson plan needs revision. Dr. Ferguson recommends the use of basic technology to help cadets learn. Kroll agrees with Dr. Ferguson's expertise in this area and suggests the Academy staff evaluate and consider this suggestion as part of the curriculum's revision.

Law Enforcement Survival Spanish

This class is taught by a TCOLE- and APD Spanish-certified Instructor and subject matter expert and is currently scheduled for 16 hours of instruction. The lesson plan was last updated and approved by the Academy on March 11, 2021.

The purpose of this course is to help cadets learn street survival Spanish and develop a better understanding of Hispanic culture, history, family, community, and language. Students will learn APD policy as it relates to utilizing Spanish-speaking officers and Language Interpreter Services. The Language Interpreter Service is available to APD officers 24 hours a day, seven days a week, and is used whenever necessary to perform police duties and to communicate with individuals who have difficulty communicating in English.

The course teaches students the importance of establishing trust with the Hispanic-American community and avoiding negative stereotypes. Students learn that fostering open communications effectively with the Hispanic community during police interactions includes avoiding the use of language that may be deemed offensive or derogatory in Hispanic, refugee, and immigrant communities.

Students learn that underreporting of crime is currently one of the biggest challenges facing law enforcement in serving the Hispanic American, refugee, and immigrant communities. Many members of these communities come from Latin American countries with highly repressive and authoritarian governments, where distrust of law enforcement is the norm. Occasionally, the failure to report criminal activity is due to internal community pressures, such as a fear of retaliation or a desire not to harm extended family members who are connected in some way to the criminal activity. At other times it is due to prior experience of discrimination or differential treatment against Hispanic Americans, immigrants, and undocumented workers by law enforcement officers.

Kroll agrees with Dr. Ferguson's suggestions to review and update this course content, especially the list of words cadets must study before the first class to reduce a "fear-based" mindset towards people of color, and to begin the class with non-fear-based introductions to the language. He also provides helpful suggestions on subscriptions to language learning apps and a custom curriculum.

Interacting with Drivers who are Deaf or Hard of Hearing

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on February 5, 2021.

The course explains the need for this type of training and defines the terms "deaf" and "hard of hearing" as defined by Section 81.001 of the Texas Human Resource Code. The course explains the Americans with Disabilities Act (ADA), which requires that individuals who are deaf or hard of hearing must have access to the same services provided to the other 90% of the population and may not be excluded or segregated from services.

Students learn about a variety of communication aids and services that are useful to law enforcement in many different situations. This includes the videophone and video relay service (VRS) or video interpreting service (VIS), which is a video telecommunication service that allows deaf or hard of hearing individuals to

communicate over video telephones and similar technologies with hearing people in real-time via a sign language interpreter. Students also learn that there are two different types of sign language—American Sign Language (ASL) and Signed Exact English—and learn differences between the two.

Students learn to distinguish what situations require an interpreter and how to identify specialty license plates issued to individuals who are deaf or hard of hearing in the State of Texas. The course helps students understand the vast population of deaf and hard of hearing individuals in Austin, which according to the Mayor's Office consists of approximately 8.8% of Austin's residents (approximately 100,600). Moreover, approximately 20% of the state's deaf population is around Austin.

Students learn that Austin is home to the Texas School for the Deaf and that the Texas Society of Interpreters for the Deaf has been offering interpretation services for residents for over 40 years. The course addresses helpful aids that assist the deaf and hearing impaired in Austin such as (1) video screens and GPS Ranger availability to facilitate walking tours, (2) TTYs, visual stands, and visual paging to relay messages to hearing-impaired passengers at the nearby airport, (3) call boxes and flashing signals throughout the city that inform deaf drivers of what lies ahead, and (4) that most state, federal, and city government jobs are accessible to deaf individuals.

Students also learn to think differently about how to handle certain calls that involve deaf or hearing-impaired individuals (e.g., DWI, family violence, handcuffing a deaf individual, etc.). For example, students learn that deaf individuals do not like to be separated from each other since not many people can sign, and that if an officer is investigating a crime involving deaf individuals, those individuals will have a hard time understanding why they are being separated. Students also learn handcuffing a deaf person behind their back is seen in the deaf culture as trying to silence them. When a deaf person is handcuffed in front, they are still able to communicate and are usually more willing to communicate. Finally, the course addresses all current APD policies that pertain to interacting with the deaf community.

This course is a good introduction to some of the issues and resources that officers must know in the field in dealing and interacting with the deaf and hearing-impaired community.

Kroll agrees with Dr. Ferguson's suggestion to revise this course to include information about Gallaudet University's history of segregation against Black deaf culture, which is an opportunity to reinforce the importance of multiculturalism. We also agree with his suggestions to consider adding interactive learning by recruiting content experts and engaging in on-site interactions and touring the Texas School for the Deaf.

Traumatic and Acquired Brain Injury

This class is taught by a TCOLE-certified instructor with experience in the topic area. It can and should be co-taught by an outside subject matter expert. It is currently scheduled for two hours of instruction. The lesson plan was last updated and approved by the Academy on October 30, 2019.

The course explains that acquired brain injury is an injury to the brain that occurs after birth and is not related to a congenital or a degenerative disease. Students are taught that acquired brain injuries can cause temporary or permanent impairments resulting in physical, emotional, and intellectual difficulties for the affected person.

Students learn the impact first responders can have on the public when responding to a variety of incidents, including domestic violence, heart attacks and strokes, drug activity, assaults, motor vehicle accidents and DWI's, and suicide attempts, among others. Students are provided a list of resources to utilize when responding to situations where an acquired traumatic brain injury is present.

Students also learn the signs and symptoms of a brain injury, such as confusion or disorientation, loss of consciousness, severe headache, nausea or vomiting, dizziness, trouble walking, and slurred speech or

vision. The course helps students become more aware of the impact of these signs and symptoms on the conduct and demeanor of their interactions with the public and helps them understand and identify the appropriate emergency medical referral.

Note: Although this course was not originally listed as one of the DEI-related courses for review, it relates to APD first responders' encounters with members of the community who are dealing with this kind of disability. (This course was not identified for review by Dr. Ferguson).

5.5 Community Input and Participation

Community Engagement / Lived Experiences Programming. The length of the planned 144th cadet class is currently set for 32 weeks and includes 37 hours of Community Engagement programming, including approximately 30 additional hours that were not previously included.[211] Past Academy sessions devoted seven one-hour blocks of time to guest appearances from community representatives, and this has been expanded to 37 hours.

- Although the precise details of the planned additional 30 hours of community engagement/lived experiences programming are currently being developed, the stated intent is to expand upon the level of participation and input from community leaders, representatives and activists who will be invited to speak to the cadets. The new Division Manager is currently working with Academy staff to proactively research potential community partners, identify points of contact within each organization, and reach out to a point of contact to determine willingness to participate and potential topics of discussion that will provide added perspective to cadet training or existing course content.
- APD provided Kroll with the below list of organizations the Academy is currently considering including in some aspects of Academy training. Where applicable, we have indicated with an * those organizations that have participated in past Academy classes:
    - Life Anew Restorative Justice*
    - Measure Austin*
    - Citizen Led Austin Public Safety Partnership (CLASP)
    - Mobile Loaves & Fishes
    - Mexican Consulate
    - Refugee & immigrant Outreach
    - Texas Association of the Deaf*
    - Transgender and Gender Marker Project
    - Austin Justice Coalition
    - Reimaging Public Safety Task Force
    - National Alliance on Mental illness (NAMI)*
    - The Settlement Home for Children*
    - Mothers Against Drunk Driving (MADD)*
    - The Jeremiah Project
    - The African American Youth Generation

In discussions with Kroll, the Division Manager has agreed to have the Academy reach out to such organizations as Just Liberty, the Austin Area Urban League, Texas Appleseed, and the Austin Equity Office, among others, to consider including as part of the community engagement programming. The Division Manager also agrees that some of the department's harshest critics should be contacted to see if

[211] In reducing the length of the training from 32 weeks to 30 weeks, the Academy plans to cut all intermediate courses, which will be taught over the first two years following graduation from the Academy. We believe that these intermediate courses are more effectively taught once the cadets have been on the street patrolling for a period of time. Thus, the planned reduction in the length of the Academy should not reduce cadets' readiness upon graduation. The 30-week content at the Academy will include all TCOLE / BPOC requirements and certain important tactical training courses, while enhancing the amount of community engagement and instruction on diversity, equity and inclusion content addressing cultural understanding and competency.

they are willing to have a meaningful conversation with cadets. Kroll believes that true and effective community engagement must include tough conversations that develop, if not agreement, at least mutual understanding of each other's perspectives. The Division Manager intends to have instructors reach out directly to these and other organizations, as there needs to be coordination and collaboration between the community representatives and the Academy before anyone actually comes in and speaks, with agreement on topics of discussion, parameters of discussion, and timing.

In addition, the Division Manager recently met with APD's Victim Services Division, which has agreed to participate in roleplays during Academy training, both as victim services role players and as victims, to provide feedback on how responses can be more victim-centered or trauma-informed, as well as to help cadets become familiar with how victim services would interface at a crime scene. Victim Services also has agreed to assist the Academy with getting instructors in touch with their community network (including Asian Family Support Services) to enable more lived experiences as part of the Academy's community engagement hours.

Kroll finds that the additional emphasis on community engagement and community input, combined with added course content such as "The History of Policing and Race in America" to be co-taught with a prominent subject-matter expert from the community, are positive additions to Academy instruction that place a necessary focus on the importance of meaningful police-community interactions and mutual understanding. As stated in the recent report of the Council on Criminal Justice Task Force on Policing:

> *Police must learn about and openly share with the public the histories of racial and other biases and injustice within their departments and law enforcement more generally. This process of acknowledgment should be part of a series of reconciliation efforts that includes empathic listening to community perspectives on police and their role in the nation's race relations—both past and present. A commitment to eliminating racial and other biases in policing, accompanied by public accountability to make good on that commitment, should follow. This public acknowledgment is particularly important to communities of color and all heavily policed communities, including immigrant and undocumented communities, LGBTQ+ communities, and people with disabilities and mental health challenges.*[212]

Community Video Review Panel (Panel): The recently completed Community Report of the Video Review Panel highlighted the hard work and diligent efforts of the Panel members that reviewed and provided feedback to a small group of APD officials on approximately 110 training videos over a seven-month period. The Panel consisted of a diverse set of community voices with backgrounds in a variety of fields, including civil rights, criminal justice reform, social justice advocacy, community organizing, academics and education, mental health, and psychology. The Panel met approximately twice a month and reviewed a selection of training videos used by the Academy pertaining to the following modules: Arrest, Search and Seizure; Arrest and Control; Crisis Intervention; De-escalation; Tactical Communication; Use of Force; and Use of Force - Legal. The Panel's task was to identify potential racial and gender inequities in the videos and note ways in which the video training material may reinforce larger cultural stereotypes and narratives.

- The Panel found that the vast majority of the videos were outdated and "disappointing in quality," contained "unprofessional or sensationalistic commentary," and perpetuated harmful stereotypes "against Black and Brown communities." The report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues.

[212] https://councilonci.foleon.com/policing/assessing-the-evidence/foundational-principles/

- The Panel also found that the recipients of violent and deadly responses from police as depicted in the videos were disproportionately working-class people and people of color. These same groups seldom benefited from crisis intervention or de-escalation strategies displayed by officers in the videos. The Panel found that the training videos emphasized the need for officers to assert control over communities of color, which often leads to rapid escalation with violent and sometimes deadly results for minor infractions. The Panel further highlighted that:
    - Women, trans, and non-binary people were limited in representation, with a "worrisome pattern of white male officers acting violently towards Black women because of perceived slights."
    - The majority of videos showed examples of "what not to do" instead of reinforcing desirable behavior.
    - The language used frequently in videos (i.e. "stop resisting", "just relax") often lacked awareness of how community members might perceive interaction with officers as threatening rather than helping.
    - The videos mostly reinforced the notion that every police-citizen encounter is potentially life-threatening, which encourages police overreactions and excessive uses of force.
    - "Many videos emphasized a transactional approach to interacting with the community with a focus on liability and quid pro quo exchanges, rather than what is needed to develop genuine, authentic interactions with community members to sustain long-term trust and relationships."
    - "Videos that showed officers antagonizing community members and using excessive force were attributed to aberrant individual behavior rather than acknowledging the cultural and systemic factors that permit or encourage such behavior."

Panel Recommendations. The Panel's recommendations addressed several systemic, community impact, and instructional concerns. The recommendations fell into four broad categories of issues and addressed the need to: (1) identify and root out biases in training materials, (2) develop more effective adult learning pedagogies, (3) build trust and positive relationships with communities, and (4) emphasize systemic change. The final report of Life Anew, which facilitated much of the work conducted by the Panel's community members and APD personnel, highlighted the following recommendations, among others, that called on APD to:

- Regularly implement diversity, race, equity, and inclusion professional development throughout APD.
- Engage in a larger conversation around racial justice, gender equality, and systemic change through an equity lens.
- Use diverse community panels in the Academy to have conversations about race, gender roles, expectations, and stereotypes.
- Clarify APD's policy on bystander intervention when an officer is behaving badly.
- Provide more active training for handling protests with non-militaristic approaches.
- Allow cadets to have more in-depth conversations about race throughout every training module. These conversations should involve people of color who have personal experience with racial equity issues and the training should teach non-fear-based policing in diverse communities.

- Increase the diversity (gender, race, ability, ethnicity) of police officers and the community members depicted in the training videos.
- "Eliminate the overrepresentation and fear mongering towards black bodies and people of color."
- Eliminate the siloed approach to teaching different content at the Academy by requiring instructors to work closely together and across subjects "to build a coordinated and integrated curriculum . . . to make the training flow better."
- Show more scenarios of positive interactions between people of color and the police.
- Include scenarios that demonstrate accountability for when policing goes wrong.
- Pair "what not to do" videos (when they are needed) with "what to do" videos, so cadets will clearly understand what they are supposed to do.
- "Focus on a service mindset and abandon the warrior mindset." Avoid selecting militaristic videos.
- Be intentional about showing officers demonstrating empathy and being "decent human beings." Emphasize "positive police and community interactions through repetition."
- Use videos from mental health experts and connect the dots between mental health and de-escalation.
- Continue use of a Community Review Panel to collaborate with APD and recommend training material selection.

APD Acceptance of Panel Recommendations. Although difficulties were encountered initially in attempts to establish trust and communication between APD and community representatives, the end result demonstrated a healthy collaboration, with several Academy leaders and instructors actively participating in the review panel's work. As a result of that approximately seven-month effort, APD has accepted all the Panel's recommendations concerning the video content and is actively making changes to its video library in response to those recommendations.

- The Academy is currently in the process of eliminating videos that were found to be offensive or insensitive to community concerns and replacing them where possible with more up-to-date and non-offensive depictions of subjects interacting with more diverse officers.
- In addition, Academy instructors are actively searching for appropriate replacement videos that more effectively depict the right way to do things, as opposed to videos demonstrating what not to do, as was the case with many of the videos reviewed by the panel. Where replacement videos have not been identified, Dr. Kringen has been provided the authority to replace such instruction with other adult learning means.
- APD also agreed to the Panel's many other recommendations and has outlined a general action plan concerning how it intends to implement the recommendations offered. Many of the recommendations provided are directly or indirectly incorporated into Kroll's short-term and long-term recommendations outlined in Section 7 of this report.

Formalizing the Community Video Review Process. Finally, APD is currently in the process of establishing a formalized system to comprehensively review, with community input, all future video content that has not otherwise been reviewed by the Panel. The previous Panel met with Dr. Kringen on March 31, 2021. Next steps include introducing Dr. Scott Bowman, who has agreed to serve as a new member, and finalizing committee members that want to stay on. A second Panel meeting occurred on April 20, 2021. The new Panel plans to meet pursuant to a regular schedule moving forward.

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5.6 Professionalism of Instructors

Instructor Professionalism. Kroll has been uniformly impressed with the passion and commitment to teaching exemplified by the Academy's current leaders and instructors. They appear genuinely open to ideas that will make them better instructors and help cadets develop into first-rate police officers.

- Kroll notes that changing the culture of an institution and long-term notions embedded into the way things have always been done is no easy task. While most instructors and supervisors state they are open to working with content experts and incorporating active learning strategies, they are passively awaiting guidance and input from leadership, including the new Division Manager, to help advise them on changes to teaching methods and course content.
- Nevertheless, Academy staff are open to incorporating outside civilian content experts as instructors in certain courses (e.g., History of Policing and Race in America and some other DEI-related courses), if done in coordination and partnership with APD personnel.
    - At present, except for History of Policing and Race in America (discussed in Section 5.4 above), plans to incorporate outside content experts in other classes (e.g., criminal defense attorney to talk about search & seizure law from a defense perspective; homeless advocate to discuss issues faced by the homeless population; mental health expert to address relevant issues, etc.), while being considered, are not yet developed. However, Dr. Kringen has included this as a top priority as she works with instructors to plan for the next and future cadet classes, and it will be a priority of the newly established Academy Curriculum Review Committee.

5.7 Cadet Injuries / Graduation Rates

5.7.1 Cadet Injuries (2015 – 2020)

According to Appendix I of the Community + Equity Assessment Series report, and as confirmed by Kroll through APD-provided data, cadet injuries over the past six years have fluctuated as follows:

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	1
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	1
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	2
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	1
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	3
Covid-19	--	--	--	--	--	56
TOTALS:	**90**	**123**	**77**	**116**	**98**	**68**

- According to data provided by APD, from 2015 to 2020, at least 509 cadet injuries occurred at the Academy. The racial and ethnic breakdown shows that, of these 509 injuries, 348 (68.37%) were to white cadets, 85 (16.7%) to Hispanic cadets, 57 (11.2%) to Black cadets, and 19 (3.73%) to Asian cadets. As noted in the Equity Assessment report, although "the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%)."[213]
- The Academy requires a healthy dose of physical fitness and defensive tactics in an effort to prepare cadets for any number of crisis situations they may confront at some point in their careers as police officers. As noted by former Chief Manley, "we pepper spray our cadets because officers need to know what it is like. We have our cadets engage in boxing because we hire people who have never fought before, and we want them to be okay when this happens after they become officers."

5.7.2 Graduation Rates by Race and Gender

Graduation rates at the Academy over the last five years show similar racial and gender disparities:

Academy Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[214]

- APD's data illustrates that Black cadets are less likely than their peers to graduate from the Academy, and more likely to be injured, than any other race. Female cadets also have lower graduation rates than white and Hispanic male cadets. As a result, Black and female cadets graduating from the Academy are underrepresented when compared to the population of Austin as a whole.
    - In terms of statistical significance tests (Chi-square analyses), overall Black cadets are significantly ($p < .01$) less likely than non-Black cadets to graduate over the entire period

[213] "Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications," page 9 (December 14, 2020).

[214] According to the Report of the Community + APD Equity Assessment Series, City of Austin Equity Office, December 14, 2020, page 8, APD has recruited one Asian woman who has successfully completed the Academy within the past five years.

examined.[215] This pattern was only true for Black cadets and not for other racial/ethnic groups.

- As noted elsewhere, however, there appears to be a shift in this long-term pattern. The race differences were not significant in the last two recruiting classes (142M and 143). Thus, the overall race-graduation differences (particularly Black cadet failure patterns) were driven by pre-2020 patterns.
- Overall, female cadets are also significantly ($p < .01$) less likely than male cadets to graduate over the entire period of study. However, the gender differences were not significant in the last two recruiting classes (142M and 143). Thus, the overall gender-graduation differences were driven by pre-2020 patterns.
- Limited statistical power inhibits our ability to determine whether Hispanic females and Black females fail to graduate at a divergent rate than all other groups. However, each factor alone (race and gender) were clear predictors of graduation in the pre-2020 trends.

5.7.3 Statistical Analysis of Data

To better understand the experiences of cadets within the various academy settings, we conducted a series of statistical analyses on the data collected by APD documenting both injuries and graduation rates from the Academy. First, we examined the likelihood of graduation for candidates who began training between January 2015 (130 modified) and February 2020 (class 143).[216] This equates to 695 individuals who began training, of which 72.9% (N = 507) graduated from the Academy.

We further examined if the overall 72.9% APD graduation rate is consistent across demographic groups. As a first step, the research team used binary logistic regression analysis, a regression-based framework to assess whether there were distinguishing characteristics of cadets that delineated their likelihood of graduation (value = 1) or non-graduation (value = 0) as the outcome measure. The statistical framework used in this report is based upon the null/alternative hypothesis counterfactual model that assesses whether there are differences that can be attributed to chance (supporting the null hypothesis) or beyond chance (supporting the alternative hypothesis). The corresponding p-value follows the conventional framework of .01 (or 99% confidence) and .05 (or 95% confidence). Thus, statistically significant findings suggest the differences across categories or between groups are beyond chance at the 95% or 99% confidence levels, which is the conventional social scientific threshold.

The measures of interest included in the analyses are indicator variables, coded as dichotomous in nature: modified class (value = 1 for cadets within modified classes) and its inverse (non-modified classes, coded as value = 0 for cadets in non-modified classes); male (coded as value = 1 for males, which has an inverse value = 0 for females); and, Black (coded as value = 1 for all Black cadets, and its inverse as value = 0 for all non-Blacks).

Table 1 below shows there are two statistically significant coefficients that distinguished graduation from non-graduation among the pool of cadets. First, Black cadets are significantly less likely to graduate compared to other racial groups ($b = -.777$, s.e. = .293, $p < .01$). Second, if the cadets are male ($b = .547$,

[215] The Chi-Square results were derived from the Pearson Chi-Square statistic. Chi-square analyses are based on the null/alternative hypothesis counterfactual framework that assesses whether there are differences across categorical measures (e.g., race and sex with graduation). The corresponding p-value follows the conventional framework of .01 (or 99% confidence). Thus, significant findings suggest the differences across categories (e.g., Black vs. non-Black with graduation) is beyond chance where $p < .01$.

[216] As explained on page 31, the Regular Academy is an approximately eight-month program for police officer candidates with no prior law enforcement experience, while the Modified Academy is approximately four months long and designed for officer candidates who have sufficient law enforcement experience in another agency.

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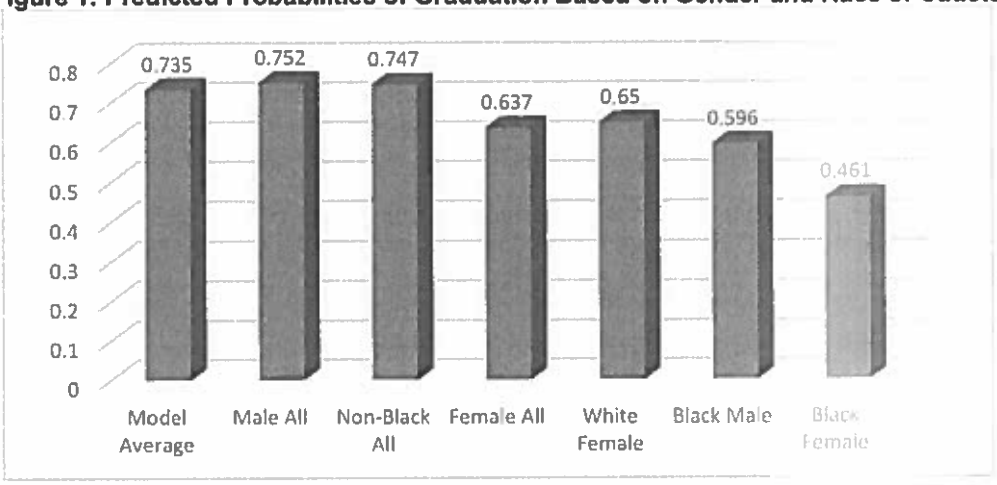
s.e. = .224, p < .01), they are also significantly more likely to graduate compared to females (which means that females are significantly less likely to graduate when compared to males). These findings hold even after controlling for injuries and attendance in a modified class. Importantly, there are no significant differences between cadets who are injured versus those who are not injured in their likelihood of graduating from the training academy. In terms of overall graduation rates, the modified classes approached significance (p = .08) but did not quite reach that threshold (suggesting that modified classes had a marginally, although not significantly higher rate of graduation relative to standard length classes).

Table 1. Logistic Regression Estimates for Graduation (Value = 1) or Failure to Graduate (Value = 0) for Austin Police Academy (N = 507) between 2015 and 2020

Measure	Beta	St. Error	P-Value
Male	.547	.224	.014
Black	-.777	.293	.008
Injured	-.048	.177	.787
Modified Class	.541	.311	.082
Constant	.581	.233	.013

To further explore these relationships, Figure 1 below shows the predicted probabilities of graduation based on cadets' race and sex. A predicted probability can be interpreted roughly as the likelihood of the event occurring after statistically controlling for everything else at their means. That is, these scores predict the likelihood that an individual factor influences graduation rates, all else being equal. For example, the probability of graduation for male cadets is 75.2%, compared to 63.7% probability for females.

Figure 1: Predicted Probabilities of Graduation Based on Gender and Race of Cadets



Further examining cadets by race and sex demonstrates there are essentially two groups of cadets that differ in their likelihood of graduation.

- **Group 1:** Cadets who are female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprises roughly 23% of the classes.
- **Group 2:** Non-Black males (White males, Hispanic males, and Asian males), which comprises roughly 77% of the classes.

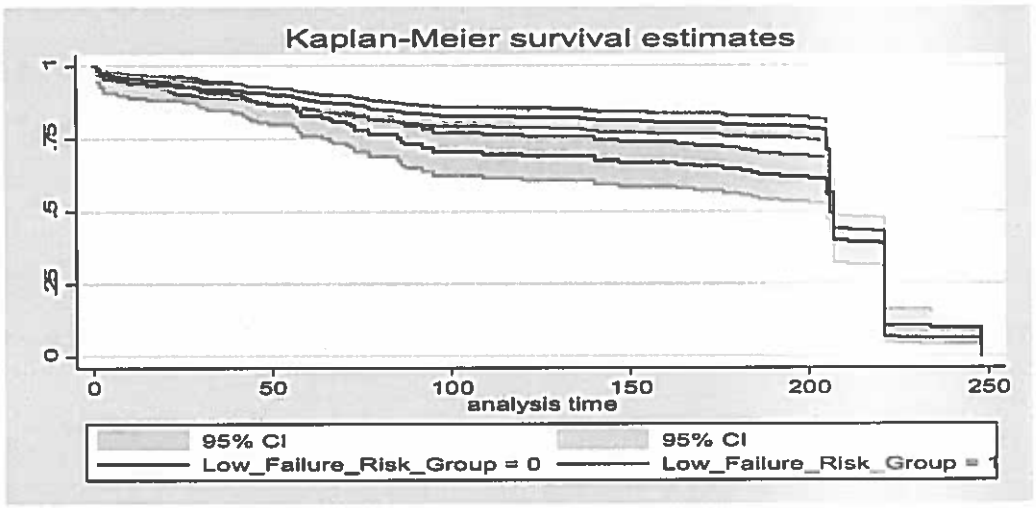
The results show that ***Group 1 is at a higher risk of not graduating from the training academy***, while ***Group 2 is at a lower risk for failure to complete academy training***.

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When attempting to delineate potential influencing or intermediary factors between these two groups of cadets, we next examine Kaplan-Meier survival curves. These curves are created from a statistical technique that distinguishes between training onset and time until academy dropout. This analysis includes all cadets, with those who graduate as 'censored' (i.e., not experiencing a 'failure' event) and those who failed to complete the Academy, while also noting the specific periods of the greatest likelihood of Academy dropout.

Figure 2 graphically displays that the "time to attrition" is roughly identical for the two groups initially. However, at roughly day 55 or so, the trajectories of the two groups change. At this point, the *High Failure Risk Group* (Group 1, comprised of Black and female cadets) becomes significantly more likely to not complete the Academy training, compared to the *Low Failure Risk Group* (Group 2, comprised of all non-Black males). The distinct and divergent trajectories toward graduation persist for the duration of the time in the Academy, from roughly day 55 onward.

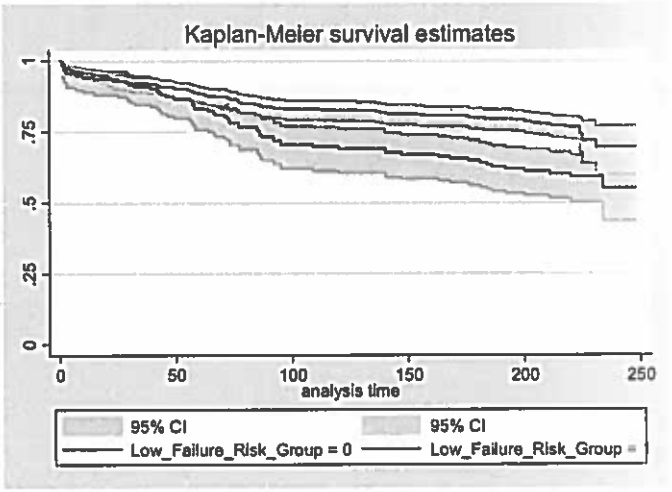
Figure 2. Kaplan-Meier Survival Analysis for Completion of the APD Training Academy



While injury alone did not distinguish graduates from non-graduates, among these two groups (Group 1= females or Blacks, compared with Group 2 = all non-Black males) the patterns of injuries are somewhat distinct. Using the same Kaplan-Meier survival estimates, we examine *time until injury* (see Figure 3 below). The findings show that Groups 1 & 2 have different trajectories toward injuries as their time in the Academy progresses. Roughly 10% of each group reports an injury before the end of the first day; their risk of injuries initially is the same. However, the average number of days until injury for Group 1 (*High Failure Risk Group*) is 55 days, compared to 66 days for Group 2 (*Low Failure Risk Group*). Also of note, roughly 25% of those injured from Group 1 (*High Failure Risk Group*) are injured by the end of the 8th day (second week of training), compared with the 18th day for the 25th percentile of Group 2 (*Low Failure Risk Group*) who are injured. In short, the risk of injury is the same for the first day of training (when approximately 10% of each group report injuries), but after the start of the second week of training, the trajectories toward injuries diverge between these two groups and these differences persist throughout the duration of the Academy.

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Figure 3. Kaplan-Meier Survival Analysis for Cadet Injury with the APD Training Academy



We also conducted a series of sensitivity analyses. The findings show that the *types of injures* for cadets across race and sex are virtually identical in terms of percentage distributions. That is, cadets in both Groups 1 & 2 are inflicted with the same types of injuries. The difference between these groups is *when they are injured*, with an earlier onset more likely for Group 1 (female or Black cadets), compared to later onset of injuries for Group 2 (all non-Black males). In summary, cadets in the *High Failure Risk Group* (Blacks and females) are more likely to be injured earlier in the training academy program, compared to those who are at lower risk of failing to complete the Academy.

Importantly, the divergence across race and gender groups related to the likelihood of graduation does not occur within the modified/shortened classes (which comprises roughly 13% of all cadet experiences). However, Black and female cadets are less likely to be in the modified classes. Specifically, Group 1 (Blacks or females) comprise 23.8% of non-modified classes, but only 9.9% of modified classes.

We also examined reasons for failure among the cadets, which is dichotomized as voluntary or involuntary removal from the Academy. Consistent with prior findings, we found that within the modified classes there were no race or officer sex differences that were associated with the type of failure (voluntary or involuntary). However, within non-modified classes, the Pearson's Chi-Square statistic (a goodness of fit statistical test to assess whether there are associations between categorical measures, in this case, race, sex, and types of graduation failure) showed that females were marginally significantly ($p < .10$) more likely to voluntarily withdraw from the Academy than were males. Table 2 (below) shows the results of this bivariate statistical analysis, which included the 174 cadets who failed to graduate the non-modified academies in this study period. Roughly 69% of females who failed to graduate the Academy during this period did so through voluntary withdraw; comparatively, only 54% of males who failed to graduate the Academy did so voluntarily. There were no other discernable correlates (e.g., cadet race) associated with voluntary versus involuntary failures.

Table 2: Pearson's Chi Square Results for Reasons for Graduation Failure (Voluntary Withdraw versus Involuntary Failure) between Male and Female Cadets in Non-Modified Classes (N = 174).

Demographic Correlate	Voluntarily Withdrew	Involuntarily Failed	Pearson's Chi-Square
Females	29 (69.0%)	13 (31.0%)	2.75, (1 df), p = .097
Males	72 (54.5%)	60 (45.5%)	

*Percentages are displayed in 'rows' for comparative purposes

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Finally, the most recent class (Class 143) did not have any differences across cadets' race and sex that corresponded with the likelihood of graduation. For Class 143, only one measure (injuries) predicted the likelihood of graduation, with those who were injured significantly less likely to graduate. Also note that 86% of these reported "injuries" were COVID-19 positive tests.

Summary

The findings from the logistic regression models, predictive probabilities, Kaplan-Meier Survival analyses, and the sensitivity tests can be summarized as follows:

1. Nearly 73% of cadets entering the APD Training Academy successfully graduate.
2. The likelihood of graduation varies significantly across cadets by race and sex. Specifically, Black and female cadets are statistically significantly less likely to graduate compared to cadets of other races and male cadets, respectively.
3. Overall, the likelihood of graduation is not significantly impacted by injuries within the Academy.
4. Modified (shortened) classes had a marginally, although not significantly higher rate of graduation relative to standard length classes.
5. The predictive probability of graduation ranges from a high of 75.2% for males to a low of 46.1% for Black females.
6. Two groups of cadets significantly differ in their likelihood of graduation and timing of injuries.
    - Group 1 (*High Failure Risk Group*): Cadets who are female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprises roughly 23% of the classes.
    - Group 2 (*Low Failure Risk Group*): Non-Black males (White males, Hispanic males, and Asian males), which comprises roughly 77% of the classes.
7. Group 1 cadets are significantly less likely to complete the Academy training, compared to cadets in Group 2. The time to attrition is roughly identical for the two groups initially; however, at roughly day 55, the trajectories of the two groups change, with Group 1 less likely to complete the Academy from that point forward.
8. Injury alone did not distinguish graduates from non-graduates; however, injury patterns differ across these two groups.
    - Roughly 10% of each group reports an injury before the end of the first day; their risk of injuries initially is the same.
    - The average number of days until injury for Group 1 (*High Failure Risk Group*) is 55 days, compared to 66 days for Group 2 (*Low Failure Risk Group*).
    - A quarter of those injured from Group 1 sustain their injuries by the end of the 8th day (second week of training). By comparison, a quarter of the injuries from Group 2 occur by the 18th day.
9. The *types of injuries* sustained by cadets do not differ significantly across race/sex group; however, there are differences in *when they are injured*, with an earlier onset more likely for Group 1 (female or Black cadets), compared to later onset of injuries for Group 2 (all non-Black males).
10. Graduation rates for the modified (shortened) classes do not differ significantly across race and gender; however, Black and female cadets are significantly less likely to be in the modified classes (9.9% of cadets in non-modified classes are Black or female, compared to 23.8% of non-modified classes).

11. The reason for graduation failure (voluntary withdraw versus involuntary failure) was marginally significantly ($p < .10$) divergent when comparing males and females. Specifically, females who did not pass the Academy (within non-modified classes) were more likely than males to voluntarily withdraw.

12. The most recent class (Class 143) did not have any differences across cadets' race and sex that corresponded with the likelihood of graduation; however, injured officers are significantly less likely to graduate (86% of injuries are COVID-19 positive tests).

Positive Changes. Kroll notes that the positive changes in the diversity of Academy leadership and to some of the more physically and psychologically intense components of the Academy (i.e., elimination of past abusive practices), as well as a distinct philosophical shift among Academy leadership to actively encourage all cadets to succeed, suggests that the Academy is conscious of and working to eliminate these inequities.

Recruiters Underutilized. The unique relationship that develops between APD recruiters and cadets is currently underutilized. Recruiters typically get to know cadets well and develop a more personal relationship with them than do Academy instructors. In the past, APD recruiters would reach out to a cadet if he or she left the Academy to obtain feedback and discuss what happened. We are told that this practice has been discontinued, although APD recently agreed to reinstitute it.

Since recruiters have a prior relationship with the cadets and perform a different function than Academy instructors, they can be a good sounding board for why a cadet left the Academy. Was it a personal decision or circumstance beyond their control such as a testing failure? Exit feedback can ensure that the Academy identifies opportunities to improve recruitment and retention. Given the current diversity of the Recruiting Unit, recruiters could occasionally assist Academy instructors in role-play scenarios and group team building exercises when needed. Increasing recruiters' interactions with cadets as they train could also serve as a form of emotional support for cadets. The recruiters often know about the cadets' personal lives and could help identify for Academy staff those cadets that may be dealing with personal challenges, such as illness of a family member, loss of a loved one, financial or other issues that could impact performance.

5.8 Crisis Intervention Team Training

In September 2018, a report from the Office of the City Auditor reviewing APD's responses to mental health-related incidents found that "APD has the highest per capita rate of fatal police shootings involving persons believed to be experiencing a mental health crisis."[217] Additionally, the report found that the department's crisis intervention team (CIT) program, developed as a best practice program, did not meet all of the core requirements for best practices developed by CIT International, and as a result, placed people experiencing a mental health crisis in Austin at higher risk of a negative police interaction.[218] Two more reports, one from the Meadows Mental Health Policy Institute sanctioned by Austin City Council,[219] and one from the University of Texas School of Law Human Rights Clinic and the Austin Community Law Center,[220] supported these claims, and each made additional recommendations to improve the department's response

[217] Office of the City Auditor, "APD Response to Mental Health-Related Incidents" (2018), 7.

[218] *Ibid.*

[219] The Meadows Mental Health Policy Institute for Texas, "Recommendations for First Responder Mental Health Calls for Service" (2019), http://www.austintexas.gov/edims/pio/document.cfm?id=320044.

[220] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings" (2019), https://law.utexas.edu/wp-content/uploads/sites/11/2019/09/2019-09-HRC-APD-Mental-REport.pdf.

to mental health-related incidents. Since these reports, the Academy has greatly improved its CIT training, as noted below.

Crisis Intervention Training. The Academy has greatly improved its CIT training in recent years and developed a training program that is consistent with national best practices. The 144th cadet class schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness (NAMI), helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families."[221] Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety."[222]

- The CIT model is a police-led, trauma-informed, collaborative response for behavioral health crises that involves training patrol officers to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis and to refer those individuals to appropriate services, as opposed to conducting an arrest, when possible. The goals of CIT programs are to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges. These programs have most traditionally been used to address individuals experiencing mental health or substance use-related crises.
- CIT training not only provides officers with more tools to do their jobs safely and effectively, but it also improves their knowledge of mental illness and community resources.
- Several evaluations have found that CIT training improves officer knowledge surrounding behavioral health-related challenges, reduces stigma associated with behavioral health, and increases officer empathy and confidence in their ability to successfully intervene in a crisis incident.
- Researchers have found that CIT training successfully increases officer awareness of behavioral health services within their communities and their support for referring individuals in crisis to these services.
- Evaluations show that CIT training increases officer familiarity with de-escalation techniques and support for de-escalating crisis events.

Curriculum Evaluation. The time allotted for the Academy's CIT course is 40-hours of instruction. For someone to qualify as an Academy instructor for CIT training, he or she must be one of the following:

- An active member of the APD CIT Unit;
- A certified TCOLE Instructor; and/or
- A subject-matter expert – i.e., must be currently serving as a mental health officer or as a member of a Crisis Intervention Team for at least two years in APD or have Mental Health Peace Officer certification through TCOLE.

The following mental health agencies and organizations provide subject matter experts (guest speakers) and training materials to assist in the Academy's CIT training:

- Integral Care

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[221] https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs.

[222] *Ibid.*

- Adult Protective Services (APS)
- National Association on Mental Illness (NAMI)
- The Military Veteran Peer Network (MVPN)
- The ARC of Texas
- Homelessness Outreach Street Team (HOST) - a collaboration of several mental health service organizations in Austin.

The above agencies provide mental health services and expertise in crisis intervention, adult protection, child & family services, intellectual and developmental disabilities (IDD), Post Traumatic Stress Disorder (PTSD) (including military sexual trauma), traumatic brain injury, and homelessness.

The Academy's CIT training includes classroom instruction on various forms of mental illness, their causal factors, and the impact such illnesses have on individuals. There is also instruction on what signs or symptoms a student might encounter when engaging a citizen involved in a mental health crisis. Scenarios and role-play exercises are cooperatively graded and observed by Integral Care.

The six selected role-play exercises were used with the permission of Ozaukee County NAMI and the Texas Veterans Commission. These six role-play videos total approximately twenty-six minutes in length. Role play exercises involving de-escalation training total four hours during the CIT course of instruction, which includes an evaluation of de-escalation principles during the exercises.

The role play scenario-based training provides students with realistic life scenarios that replicate exposure to the potential stressors and challenges of engaging with people experiencing a mental health crisis. The practical demands of officer safety, de-escalation, and problem solving are included in the training. The goal of this training is to enable students to use the skills and tools learned to successfully de-escalate these encounters. Kroll finds that the Academy's CIT training is comprehensive and involves a balanced mixture of classroom instruction, role play scenario-based exercises, and instruction in collaboration with mental health subject matter experts that is consistent with best practices. However, we note that the 2019 report from the University of Texas referenced above suggests that, while Austin's use of a Crisis Intervention Team partially aligns with the "Memphis Model," Austin's program does not incorporate all best practices for training, like refresher courses and visits to mental health facilities.[223]

Additional CIT Instruction. After two years of law enforcement service, APD officers can voluntarily receive an additional 40 hours of training to become CIT Patrol Officers, who directly respond to calls regarding incidents involving a person in a mental health crisis. Members of a separate Crisis Intervention Unit are responsible for administrative tasks like reviewing all calls classified as relating to a mental health crisis, functioning as the liaison between APD and organizations in the mental health community, and assisting with training the CIT curriculum at the Academy.

Kroll finds that the Academy's CIT training is comprehensive and involves a balanced mixture of classroom instruction, role play scenario-based exercises, and instruction in collaboration with mental health subject matter experts. However, while APD has instituted several reforms to the program, the Academy should continue to monitor the success and failures of the program and consistently refer to up-to-date best practices. In addition, APD should continue to build collaborations with various mental health-related entities, increase emphasis in training on reducing stigma of mental illness among officers, and require regular refresher courses on CIT principles.

[223] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings," 17-21.

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5.9 Additional De-escalation / Use of Force Training

ICAT Training. Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum.

- ICAT is an evidence-based best practice designed by the Police Executive Research Forum (PERF) to help police officers "safely and professionally resolve critical incidents involving subjects who may pose a danger to themselves or others but who are not armed with firearms." (https://www.policeforum.org/assets/icattrainingguide.pdf). In its original format, ICAT training is designed as a 16-hour training block.[224]
- ICAT training instructs police officers in de-escalation tactics and critical thinking skills for the management of potentially volatile police-citizen encounters, encouraging the integration of crisis recognition and intervention, communication skills, and operational tactics in police responses. This training is designed for patrol officers responding to circumstances involving persons in crisis – that is, individuals that may be behaving erratically due to mental health concerns, substance use, situational stress, and/or intellectual/developmental disabilities.
- The ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries (Engel et al., 2020).
    - Although officers have fewer options when dealing with threats involving firearms, ICAT is a training guide designed to fill a critical gap in training police officers how to respond to volatile situations in which subjects are behaving erratically and often dangerously, while unarmed or armed with a weapon other than a firearm (e.g., knife, baseball bat, rock, etc.). As explained by PERF, the ICAT Training Guide "includes model lesson plans and support materials (including Power-Point presentations, videos, and other resources) in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics. ICAT then integrates these skills and provides opportunities to practice them through video case studies and scenario-based training exercises."
    - ICAT's course content includes Legal Concepts, Critical Decision-Making, Crisis Recognition, Communication, and Tactics. Students learn to demonstrate key verbal communications skills that are critical to defusing (de-escalating) tense situations and gaining voluntary compliance. Students also learn to explain concepts such as "tactical pause," distance plus cover equals time, tactical repositioning, and continual assessment, all of which are essential to de-escalating encounters with citizens in crisis.
- The Academy should expand the tenets of ICAT in its training so that it becomes an expected action to emphasize de-escalation whenever an officer interacts with the public and there is a possibility of a confrontation. Including these efforts in role-playing exercises and case studies will help embed the principles of de-escalation into the culture of APD.
- **Verbal Communication and Public Interaction.** This course is a state-mandated course pursuant to BPOC, Chapter 25. Kroll reviewed the lesson plan for this course, which is a sixteen-hour de-

[224] The Academy curriculum includes other de-escalation scenario-based role play training in the following courses: CIT (4 hours), Verbal Communications and Public Interaction (16 hours), and Basic Taser training (1 hour), which combines for an additional 21 hours of de-escalation training. In combination with the 10-hours of ICAT training, the Academy provides a total of 31 hours of de-escalation training.

escalation course focused on teaching cadets to effectively communicate when interacting with members of the public. The entire course is devoted to communication skills that are intended to de-escalate encounters with members of the community in an attempt to avoid using force and defusing other situations. The crucial components of paralinguistics, kinesics, and empathy are discussed.

- **Taser Basic User Course.** This is an eight-hour course on the use of the Taser Conducted Electrical Weapon (CEW) that incorporates four drills and four scenarios and includes one hour of de-escalation training. The course provides operational theory and practical training to safely and effectively operate the issued CEW. The course is completed in its entirety using training materials provided by Axon International (Manufacturer).

5.10 Non-English-Speaking Residents and Persons with Disabilities

In addition to training cadets on Law Enforcement Survival Spanish, which was discussed in Section 5.4, the Academy makes cadets aware of the additional resources available to officers to assist in interactions with non-English speaking residents. For example, when interacting with a resident who speaks a language other than English, officers can send out a city-wide dispatch for assistance with the particular language at issue and an available interpreter will respond to the scene. If there is not a bilingual officer available who can assist, an official interpreter can be requested from the city's Language Line, which will immediately dispatch an interpreter who can help translate. Certified court interpreters are also available when needed by investigative units. This information is supplemented and detailed in APD General Order 609.2 and was confirmed in Kroll interviews.

The department also offers an internal stipend program that will pay for officers interested in learning additional languages other than English (including American Sign Language). The program tests for proficiency and compensates officers who become bilingual.

Additionally, as noted in Section 5.4, the Academy teaches a course on interacting with deaf and hearing-impaired individuals in traffic stops and other scenarios. The course discusses the variety of communication aids and services that are useful to law enforcement in communicating with deaf individuals, including the videophone, video relay service (VRS), and video interpreting service (VIS), which allow deaf or hard of hearing individuals to communicate over video telephones and similar technologies with hearing people in real-time with the aid of a sign language interpreter.

Cadets are trained on how to distinguish what situations require an interpreter and how to handle certain calls that involve deaf or hearing-impaired individuals. They also learn about all current APD policies that pertain to interacting with the deaf community.

Training on communicating with persons with disabilities is covered in the 40 hours of Crisis Intervention Team training concerning interactions with residents who have a mental illness/disability.

5.11 Field Training Officer Program

The APD Field Training Officer (FTO) Standard Operating Procedure (SOP) comprehensively addresses the criteria and method for selecting FTOs, the training provided to perform their duties, supervision, evaluation, the length of time trainee officers spend in the program, and the methods by which FTOs assess and evaluate trainee officers in the field.

APD Field Training Program. The APD Field Training Program (FTP) is a 15-month education and evaluation program. At present, the department is authorized 152 FTO positions. FTOs are considered role

models for their trainees. To be selected as an FTO, an officer must complete a minimum of 24 months continuous time as an APD commissioned officer on patrol. (Officers that graduated from the Modified Academy or those with a minimum of two years of prior law enforcement experience from an accredited law enforcement agency may qualify as an FTO after 18 months continuous time as an APD commissioned officer.) FTOs are to teach respectfully and professionally and may not have trainees do any activities beyond the normal scope of their duties, and the department prohibits FTOs from requiring trainees to conduct tasks as a "rite of passage" or "initiation."

Selection Procedures. Each level in the FTO applicant's chain of command is responsible for the selection and approval of the applicant as an FTO. To be selected, FTO candidates are required to demonstrate their commitment to community policing, as well as their problem-solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts, and commitment to APD philosophy are the primary criteria in the selection of FTOs.

Excessive numbers of complaints (sustained and not sustained) or use-of-force incidents shall bar a candidate from selection as an FTO for no less than two years. Sustained disciplinary action against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based discrimination or slurs, or other serious examples of police misconduct, shall result in termination from the FTO program.

FTO Training. The following Training is mandatory for selected FTO's: FTO Advanced Training completed each calendar year, FTOs that complete the APD Basic FTO School (School) are exempt from the FTO Advanced Training for the same calendar year that they complete the School.

FTO Surveys. FTOs may elect to participate in the FTO 360 survey and/or FTO Exit survey. The 360 survey is anonymous and intended to provide information directly to FTOs who want to improve their performance and skills. Survey results are not shared with anyone except the affected FTO.

Staff Inspections. Annually, the Field Training Unit cooperates with the Inspections Unit of the Professional Standards Bureau when they perform a staff inspection. The purpose of the staff inspection is to compare APD's formal expectations with the actual performance of the Field Training Unit to determine if APD policy and SOPs are being followed.

Incentive Pay. Candidates that are selected to participate in the FTO program receive a pay stipend as a financial incentive, in recognition of the fact that becoming an FTO adds significant responsibilities to an officer's job duties. However, several officers Kroll interviewed indicated that the stipend for being an FTO does not adequately compensate officers for the added responsibilities. Most officers who become FTOs do so primarily because they want to contribute to the development and training of new officers.

Neighborhood Portfolio Exercise. Throughout the Field Training Program, trainees are to develop a detailed geographical, social, and cultural understanding of the area to which they are assigned. This Neighborhood Portfolio Exercise is designed to give the trainee a sense of the community where they work. It also encourages the trainee to develop community contacts that are critical when practicing community-oriented policing and problem-solving initiatives.

Returning Officer Program. Officers that have been rehired by APD or who return from an extended period of leave (e.g., military deployments) are assigned to the Continuing Education Unit's Returning Officer Program. This requirement only addresses the need for updated training and not any de-programming from military service. For example, there is no provision for mental health evaluations or other services prior to returning to full-time police service (officers can deploy several times). Common mental health symptoms of combat veterans include PTSD, anxiety, sleep problems, depression, withdrawal, and isolation aside from physical injuries. If not appropriately addressed, these frequently unnoticed symptoms

can translate into significant issues of concern for the department regarding officer conduct and interactions with the community. To address this, Kroll has included a long-term recommendation that addresses returning military veterans and recruiting from the military.

Evaluation. Overall, APD's FTO Program is well structured and documented. However, to further strengthen the program and address several of the concerns raised by the City of Austin and the community concerning the FTO Program, we have included some additional long-term recommendations, which are outlined in Section 7 of the report.

Kroll also notes that ***Section .06, Sub-section C, Paragraph 10*** of the SOP appears incomplete ("No Internal Affairs records of sustained violations that reflect any form of ethical misconduct, and" . . .) and should be corrected.

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6 COMMUNITY FEEDBACK

During the course of our assessment, Kroll spoke with community leaders and activists associated with the following organizations:

- Just Liberty
- NAACP
- Austin Area Urban League
- Austin Justice Coalition
- Texas Appleseed
- MEASURE
- Greater Austin Crime Commission
- Community Police Review Commission
- Community Video Review Panel

We also presented our preliminary findings before City Council on March 2, 2021, and before a community forum put together by the Office of Police Oversight on March 23, 2021, which was attended by approximately 50 participants. A number of common themes and comments were provided by the community members we spoke with, including the following:

Community Engagement

- APD is a fairly standard representation of its species in a community that has been migrating towards a very different view of what public safety looks like – there is a widening gap between APD's view of the department vs. the community's view of the department.
    - APD tends to dig in its heels to standard practice and resists calls for reforms.
- The department needs to continue the work of community engagement – a lot of officers want to do good. There needs to be a dialogue with community members that are willing to work with APD on it.
- We do not like the term "re-build" trust – because there was never any trust built between the police department and the Black community.
- APD needs a diverse academy with community involvement, with all groups represented – Black, Brown, women, etc. The department needs to train people on cultural competence – but this is not currently happening. The "groundwater is muddy" – we need transformational change.
- APD shows "no respect and no interest in community policing as it pertains to non-white bodies."
- There are solutions that community partners could offer to APD. But APD should initiate them, so it doesn't look like we are shoving it down their throats. The community can only force it so far.
- There was a stark difference between the community outreach that occurred under Chief Manley vs. Chief Acevedo. The way Chief Acevedo interacted with the community seemed more accessible and approachable, which resulted in more grace from the community.
    - Chief Acevedo did more to engage with the Latino community.

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- APD tends to have better conversations with the community when they go out into the community (e.g., coffee conversations, etc.) rather than when the community comes to them. But the community does not always engage in these activities because of a lack of trust.
- It is important to recognize where Austin is in terms of change – more community policing will not necessarily solve the problem (mental health, homeless population). We need to divert calls involving mental health issues and social problem from police to other agencies.
- The whole reimagining policing process is happening now – Chief Manley was not willing to do this. We need someone willing to think outside of the box. It is very difficult to talk to someone who is not willing to examine the causes of police mistrust.
- The need for policing is not what it was when the 21st Century Task Force was drawn up. We need to get to a point where communities are healthy, and we need policing less and less. This is part of the ongoing conversation we are having in Austin.
- The Community Video Review Panel was pleased to learn that APD had accepted the Panel's video recommendations, but they want broader change and are tired of dealing with only surface-level changes.
- The Panel agreed that a formal structure to review the Academy's other training videos, as well as course content, should be established moving forward.
- More community engagement is needed as part of police training – the Academy's recent level of community engagement was virtually non-existent.

Cultural Competency

- APD needs to be "culturally responsive" – cultural responsiveness is not part of their training division. "Either you are teaching diversity, equity, and inclusiveness (DEI) or you are not – and they are not."
- There are a lot of cultural issues with the APD and the City of Austin. The Training Academy does not communicate well with different cultural organizations.
- We have to be able to screen out bigotry and white supremacy.
- For any sort of anti-racist training to work, you must examine the sustainability of that model and make sure that you revisit it – "a one-off doesn't work." You must revisit with similar types of training, taught by different individuals with experience in diversity and inclusion – this is bigger than just Austin. The mentality has to change, and it has to seep into law enforcement.
- The History of Race and Policing in America is a good step forward. It is important that all officers understand these issues. Some of this information may be "painful" but it is important for people to understand how their privilege (or lack of privilege) impacts everything. But such a course and its content need to be revisited annually so it can be sustained and impactful in the long run.
    - Police forces were historically developed to protect white interests.
- There should be requirements for annual training that deal with issues of diversity, equity, and inclusion.
- The City has historically been "anti-Black" – although we are growing in numbers, this is not necessarily happening in the Black community, and it is impacted by the Black community's

relationship with APD. Part of this is economic and the high cost of living; but it also comes from perceptions that the City is not serving the Black community.

- Austin is one of the most economically segregated cities in the country.

Transparency and Accountability

- "Are you open to criticism when you write your curriculum?" APD has been very resistant to outside critiques.
- "You must teach officers to respect everyone" – this is a must to have credibility, accountability.
  - This can be a "win-win" – but APD must change from a warrior to guardian mentality.

Training

- The Academy needs to teach more ethics and do more scenario-based training. What do you do if you see an officer employing excessive use of force? Etc.
  - Cadets must learn that they are here to support and serve the community, not to control the community.
- In 2018, there was an Academy class that lost a large number of cadets to attrition; several former cadets testified during a city council hearing – it was atrocious and compelling testimony.
- There is a "core lie" that has been disseminated to the community – that the core curriculum required by TCOLE cannot be changed by law; APD contends they can add classes but cannot change the core curriculum.
  - "That is not true" – there is a baseline of things a student must know when they leave the Academy, but there is no reason APD could not change and adjust the core curriculum.
  - TCOLE had an old curriculum that still referenced reading lists from the 1980s; they rolled out a new curriculum in the last 1-2 years, but the last cadet class was still being taught under the old curriculum.
  - Even though the City of Austin temporarily closed the Academy, APD was going to have to redo its curriculum anyway, because the TCOLE curriculum was substantially changed.
  - How courses are taught, and how instructors connect the dots between the units, is something that can be done differently without impacting the essential course content. It is a form of insanity that APD continues to teach "into the problems".
- Academy uses fear-based training. The video review panel report is illustrative of this theme.
  - That APD teaches its officers to "fear the public" and that officers "need to come home safe" at all costs is a major problem. This approach conflicts with the need to teach communication and trust, real-life dynamics that officers will confront in their jobs.
  - Police officers spend most of their days involved in what is essentially social service work, which is much different than "fighting crime." There is a deep vein of racism that constantly reproduces the problem.
  - It has been a horrifying experience for the people serving on the video panel – to see how the community is perceived and represented in the videos.
- No one has said the Academy needs to be closed forever – but there needs to be a coordinated and public effort to ensure that true reform occurs (with transparency).

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- Consistency in messaging is important. Historically, there has not been a lot of consistency in what is being said regarding how APD is training its cadets and how individual officers are instructed.
- Why is Austin so late at banning chokeholds? And what tactics are the department teaching in the Academy when officers encounter certain situations?
- There is a gap in training – a police officer's first response should not be to engage in detrimental violence. Violence should be a last resort. You need to bring in mental health professionals in many situations that officers are asked to address.
    - Military tactics – e.g., taking the high ground and surrounding the enemy in a combat situation. APD applies military tactics during peaceful protests against people who have perpetrated no violence against officers – violent acts against non-violent protestors. It all goes back to leadership and training.
- Some would suggest that the problem is not at the Academy but with the Field Training Officer program after cadets graduate.

De-escalation Training

- APD says that de-escalation is "sprinkled" throughout the training – but why not make it more intentional?
- Austin has a high rate of officer-involved shootings with people in mental health crises.

Police Culture

- It should be part of the culture of APD that they want to do better – this is not a revolutionary concept. They should have been doing more from the very beginning.
- We need to "change the culture of not just policing but our community" – presenting public safety as a means to achieve "whole, flourishing communities."
- How cadets view the community (and how they are taught) is crucial – they need to be true "peace officers" as well as "sentinels" – there are elements of both (guardian and warrior) in what police officers do.
- A pro-police community representative noted that the Academy stopped doing a number of "paramilitary-type things" years ago, and that APD is trying to evolve the Academy into a hybrid paramilitary/civilian format. But this representative acknowledged that there is legitimacy to much of the community concerns and criticisms, and the impetus behind the community's desire for a guardian vs. warrior approach. "We applaud the level of scrutiny that police training has been given and should continue as it progresses." APD has done a lot to improve procedures and tactics, but it is an ongoing process. During the protests last summer, APD learned a lot about less-lethal munitions, etc. – this is a process where they continue to make improvements.

Recruiting and Promotion

- APD's standards are too low for how they recruit officers initially; they should start with people graduating college with criminal justice and related degrees. There are too many examples of people being recruited who have racist instincts – this needs to be screened out (e.g. – that Justin Newsom made it to top leadership reflects on the type of people they are bringing into the department).

- There are six HBCUs in Texas that produce over 100 criminal justice degree graduates per year.
- The City should allocate some budget for scholarships at these schools in exchange for a 4-year commitment at APD.
- Officers that come in with a 4-year degree are less likely to use force and more likely to productively engage with the community.

- Chief Manley had said he would bypass people when making appointments to leadership positions to increase diversity and accountability – but when he had the opportunity to do so, he used his optional bypass authority to promote people with little interest in increased accountability.
  - There remains a lack of diversity within APD leadership at the highest ranks. For example, unless there has been a recent change, there remain no Black Commanders.
- HR practices need to be looked at – inequity is built into the system.
  - If Black and Brown officers are not getting into the higher ranks, there is a problem of inequity.
- Even though APD officers have the option in many cases to give a ticket or citation vs. arrest, they are arresting Black and Brown people disproportionately.
- Chief Manley had become increasingly intransigent against council directives, and APD has essentially ignored council resolutions. "We have lost trust and faith in APD and the city's ability to do anything about it."
- APD should prioritize the candidacies of women – good outcomes come with female leadership.

Officer Discretion

- APD officers frequently ignore the body camera policy – officers often don't turn the camera on or come up with other excuses (e.g., camera broke). "If we can't trust officers to turn on their body cameras, how can we trust them on other things?"

Allocation of Resources

- The department needs to shift its approach and work with other agencies in certain situations – EMS, fire department, social workers – not every issue requires a traditional police response.
- The "core of everything" for reimagining policing starts at the training level.
- Several community members commented positively on recent changes to 911 calls – i.e., removing mental health calls from APD's function – this is a step in the right direction.
- As of June 2020, APD had successfully diverted hundreds of calls from 911 police response to other agencies (80-85%) – but in that same period, there were over 3000 calls to 911 with a mental health component. The police do what we ask of them – which, unfortunately, is everything.

Reimagining Public Safety Task Force Feedback

Task Force Member Brion Oaks motioned to have a level of demonstration or proof from APD that the various areas have been addressed in the Academy, including:

- The killing of residents by police (use of force issues) [This issue will be addressed in Phase B of Kroll's evaluation].

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- The graduation rate for Black cadets and rate of disproportionate injuries to Black cadets in the Academy [This issue is addressed in Kroll's report].
- The overall injury rates in the academy training [This issue is addressed in Kroll's report].
- Addressing the video curriculum issues [This issue is addressed in Kroll's report].
- Racial profiling (stop, searches, arrests) [This issue will be addressed in Phase B of Kroll's evaluation].

Questions from March 23rd Community Forum

During the community presentation and forum that was hosted by the Office of Police Oversight on March 23, 2021, there were a number of insightful and engaging questions presented to Kroll concerning its preliminary findings and recommendations. The questions are reproduced below. Kroll's initial attempts at answering these questions can be viewed at the following link:
https://www.austintexas.gov/blog/community-provides-feedback-apd-recommendations

1. *Did you interview people with lived experience with the police?*
2. *Can you define "adult learning?"*
3. *Will integral care be integrated?*
4. *What were the orgs under refugee and immigrant outreach?*
5. *There was a statement indicating that the recruiting unit has "significant diversity" and the numbers showed 17% female members, and 83% male members. How is the identified as "significant diversity"?*
6. *How many weeks of crisis intervention training are considered "best practice"? What are examples of cadet academies nationally that institute those best practices?*
7. *Can you speak a little more to the "warrior" and "guardian" discussion, and how a department can maintain a 30% warrior without over emphasizing the most unusual situations and undermining how officers behave in common interactions or in first amendment protected activity (where the vast majority of folks are peaceable).*
8. *If this report is preliminary, what has yet to be reviewed and finished before the full report comes out in April?*
9. *To what extent, if any, will the academy incorporate the principles of the Center for Policing Equity in its training?*
10. *Why has the length of the academy been shortened?*
11. *Does Community Policing fit into your recommendations?*
12. *Will no knock raids be either eliminated totally or at least eliminated for drug related cases?*
13. *Will the instructors that have perpetuated the militaristic US V. THEM mentality be removed and replaced with instructors that have demonstrated ability to train in the reimagined ways?*
14. *Which recommendations related to the academy and to the department, as a whole, would you all say would need to be solidly in place before Kroll would feel confident about the training academy resuming?*
15. *Are there any vestiges, even subtle, of the Grossman "killology" school of police training in the academy curriculum? If so, is there an active plan to remove them?*
16. *New cadets are the people with likely the least power in the department. What measures will be taken to ensure that this training translates into long term change in the department when new cadets will be poured into an academy culture that has been built on an entirely different framing of training*

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and operating. How can we have faith that the changes will be welcomed by those who have been operating in a completely different modality?

17. What will be done to ensure that 'diversity' includes people with disabilities?

18. What consideration has been given to the vetting and retraining of all current officers before having a new cadet class, so that they don't undo any positive training new cadets receive?

19. Are the Beyond Diversity/Groundwork trainings short term trainings or ongoing investments in change within the culture, and are they department-wide, or just for cadets?

20. The report indicates that Kroll found "APD reluctant to incorporate a lot of community/civilian input and distrustful of non-police personnel." Given this culture, how can community input be meaningfully incorporated if there's a culture of mistrust of civilians?

21. Why do you not include other identities when mentioning "diversity"? It is not just race or gender.

22. Other countries have police "universities" that take 1- years to complete. Any thoughts to aspiring to a model like that?

23. Will existing trainers and educators in the Academy go through a long-term retraining on the new curriculum before engaging in leading trainings again? How will their success in incorporating the training be measured?

24. What is the relationship between transforming training and making significant changes to general orders and other systems of accountability for racial profiling, violence, and other misconduct?

25. Does the academy solely train officers for APD or do smaller agencies throughout the region send cadets here, too?

26. Many of us have experienced this reluctance directly. Do you believe that accepting community input can produce better curriculum?

27. How many people that have been arrested by APD did you involve in this assessment?

28. Does the academy address the issue of officers not feeling comfortable reaching out for psychological help, out of fear of stigma/damage to career?

29. Can an assessment of the Academy truly be complete without completing all phases of the evaluation since instructors and culture play such a huge role in how the cadet class is incorporated and led into the larger department?

30. Will all the phases of your evaluation and recommendations be complete before the council makes a decision on timing for the next academy class?

31. How long will the Academy be trained in "Adult Learning" before implementing a new cadet class?

32. you speak to the lived experience with arrest, detention, and/or incarceration of any of your advisory experts?

33. Will academy curriculum reform efforts also examine how disability is treated? There is a federal lawsuit by a deaf person alleging he was mistreated.

34. How will any cultural changes within the department be measured and determined and who will be making those determinations?

35. What outreach is being done to the Austin Texas disability community to build and maintain community policing?

36. How was the time period of two weeks chosen for the program for cadets to immerse themselves into the community? How would this work logistically? how would they be immersed into community programs and organizations?

37. What is the relationship between transforming training and making significant changes to general orders and other systems of accountability for racial profiling, violence, and other misconduct?

38. Will all the community questions here be catalogued/archived for reference by the City?

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39. Will the answers to all the questions in the chat be made public?

40. How much time do cadets in training watch body cam footage of interactions gone wrong?

41. If the goal is to completely transform the impact that police are having on the community, how can we move forward if the recommendations do not yet include the perspectives of community members who have been most directly impacted by policing in this process? For example, the statement made earlier that immigration is a separate issue from policing completely ignores the impact that the threat of deportation from any arrest has on immigrant communities. I share Melissa's sentiments made above and have also spoken with many people who have experienced trauma and life altering harm from interactions with police, and not exclusively around mental health issues. System transformation significant enough to address these issues cannot even begin to happen within a period of two months.

42. How can a cadet class begin before the phase about accountability measures? As one community member pointed out in a Reimagine Public Safety Task Force meeting, an officer who got angry and confronted the Chief during a city council meeting would not be keeping his job, but officers who kill and maim community members have consistently kept their jobs. If cadets come into a department with this culture without changes in accountability policies, and learn from officers currently in the field, how will they get the message that these kind of interactions with the community will not be tolerated?

43. Given that we're reallocating funds and roles, how can a shortage of police right now be more urgent than getting the transformative change pieces in place in APD first?

Community Feedback on Reimagining Public Safety Task Force Website

On March 16, 2021, the Reimagining Public Safety Task Force published an abbreviated list of Kroll's preliminary short-term and long-term recommendations and sought community feedback and input on those recommendations. The recommendations listed were articulated as follows:

SHORT TERM RECOMMENDATIONS

1. *Transition to a blended civilian/police academy.*
2. *Create an academy curriculum review committee that includes community members.*
3. *Formalize the process for review of videos shown at the academy.*
4. *Create a model for academy and expert community subject matter experts to teach courses together.*

LONG TERM RECOMMENDATIONS

1. *Develop strategies to enhance long term racial, ethnic, and gender diversity of academy staff and faculty.*
2. *Implement two-week community engagement program for cadets.*
3. *Provide continuous de-escalation training for cadets and current officers.*

Many of the comments submitted were once again insightful and thoughtful. Although some of the comments suggested that the commenter was unaware that the list of recommendations posted included only a small number of the total recommendations and that Kroll's assessment was still underway, most comments were positive on the recommendations provided but noted correctly that many other factors must also be considered. The following link provides all of the comments posted:

https://www.speakupaustin.org/reimaginingpublicsafety/forum_topics/apd-training-academy-recommendations

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7 APD TRAINING ACADEMY – RECOMMENDATIONS

As noted in Section 5, the APD has implemented a number of changes to address issues previously raised by the City, the community, and independent consultants. The Academy has made significant strides in diversifying its leadership and instructors to better reflect the community APD serves, although it has more work to do at the instructor level. The group of leaders and instructors presently at the Academy are highly professional, passionate about what they do, and genuinely interested in making the Academy a best-in-class institution.

That said, APD historically has been reluctant to incorporate adult learning theories and modern teaching methods into much of its course content, and an even stronger reluctance to change the paramilitary nature of the Academy in any fundamental way. As noted in Section 6, the relationship between APD leadership and certain segments of the community remains tense and broken, with several community activists expressing an unwillingness even to engage with the former Chief. As with many police departments across the country, the police professionals feel like they are under constant attack and not given credit for much of the good work and public service they do, while the many and varied community voices most engaged in criminal justice and police reform efforts feel disrespected and unheard.[225]

But there are moves in the right direction. First, creating the Organizational Development and Training Manager (ODTM) position, so that an educational expert can review the curriculum and work with instructors to develop ways to incorporate creative adult learning strategies into the training, was a proactive, positive initiative that should pay long-term dividends. Moreover, making the new ODTM a Division Manager, if backed by leadership, will help transition the Academy into a true adult-learning educational institution. Second, the collaborative work between APD and the Community Video Review Panel, while difficult and turbulent at times, ultimately produced an excellent example of police-community collaboration that can and should form the foundation of future relationship building between APD and the citizens it serves. Kroll knows of no other academy in the United States that has evaluated its training videos for instances of bias and inappropriate content in this manner. Third, adding 30 hours of community input and participation in cadet training, and the addition of course content such as The History of Policing and Race in America to be co-taught by a locally-based subject matter expert, further demonstrate a commitment by APD to improve its community relationships and train cadets in a manner more attuned to the community policing, guardian model that the City and the community desire.

There are additional and necessary measures to be addressed in the short run, including teaching methods and incorporation of adult learning strategies, substantive course content, community engagement, input and participation, and increased use of civilian content experts. Other more fundamental issues, such as significant changes to Academy culture, philosophy, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run with existing leadership, fundamental change cannot realistically be expected to happen overnight.

For these reasons, we have divided our preliminary recommendations into short-term and long-term measures, as noted below.

[225] Kroll notes that former Chief Manley had expressed to Kroll a willingness to engage with the community despite resistance from some vocal community activists. Additionally, the Acknowledgement section of the Joyce James Consulting Report commended the willingness of the Chief and his command team, and other sworn and civilian staff, to engage in open and honest dialogue that her team facilitated about institutional and structural racism. This would appear to be a step in the right direction for APD to begin honestly addressing racism institutionally.

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KEY RECOMMENDATIONS

7.1 Short-term Measures

To begin addressing concerns expressed by the community and the findings, analysis, and recommendations of the reports and assessments conducted to date, and based on our best practices research in Section 4 and our findings in Section 5, the following steps should be completed before the start of the 144th cadet class:

1. It is imperative that the new Division Manager have a clearly articulated mandate to lead Academy instructors in (a) incorporating adult/active learning models throughout the Academy – specifically as to the DEI-related courses examined in this report and in Dr. Ferguson's Level I and II recommendations in his April 2021 report, and (b) implementing the recommendations of Dr. Villanueva's Review Analysis and Strategic Plan report of May 2020, pages 10-11. While we commend APD and the City of Austin for hiring Dr. Anne Kringen as a Division Manager to replace the prior Organizational Development and Training Manager, we learned that there was significant friction between sworn Academy staff and the ODTM position this past year. APD leadership needs to make clear that Dr. Kringen speaks on behalf of leadership.
    - At the same time, APD Command staff needs to accept ultimate responsibility for implementing these recommendations and transitioning the Academy to a resiliency-based training model. This is not something that can be delegated exclusively to the Division Manager.
2. The Academy should also, as soon as practicable, hire and onboard a Training Supervisor to work with the Division Manager in updating and standardizing curriculum and support materials to better reflect adult and active learning strategies. This added position will eventually help transition the Academy to a blended civilian and police-led training academy with outside civilian instructors and APD Academy instructors teaching cadets individually or jointly as appropriate for the course content.
3. APD should expedite the procurement process to begin implementation of an automated Learning Management System (LMS) that will facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work, and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class.
4. The Academy should formalize an internal review committee responsible for reviewing each instructor's syllabi and curriculum and suggesting ways to improve each class in the Academy. (We understand that Dr. Kringen is currently forming an Academy Curriculum Review Committee for this purpose). The committee should include the new Division Manager and soon-to-be-hired Training Supervisor, along with selected Academy supervisors and instructors, and outside academic and community representation. The panel could start with reviewing and evaluating video presentations of the training that is intended to be presented to the next cadet class.

- With the assistance of the Division Manager and the Training Supervisor, and in coordination with the Commander and Academy supervisors, all course content, including courses taught by the Learned Skills Unit and Cadet Training Unit, need to be evaluated for ways to incorporate DEI content into all aspects of training. The current siloed approach, which essentially isolates DEI courses from police tactical training, should be modified to ensure consistency of messaging and a fundamental emphasis on the humanity and complexity of the citizens APD serves and protects. "Checking the box" once a course is completed needs to be resisted. Teaching about multiculturalism and the importance of community relations in week one will be undermined if we then train "warriors" to counter all threats in later weeks. All courses should be reinforced, formally and informally, throughout the cadet training program.
- Cadets must be thoroughly and effectively trained on all proper defensive tactics, arrest and control techniques, crowd control, and so on. But the messaging throughout the Academy needs to consistently emphasize the ethical responsibilities of policing, teach a sensitivity to legitimate community fears that are based in history, and recognize the complexity and nuance of the human beings that cadets will interact with daily. Cadets must understand that more than 95% of day-to-day policing is more akin to social services than policing. The single most important skill that a police officer can develop is the ability to effectively interact with and relate to a diverse community of people in ways that are honest, authentic, and transparent. Implicit messages, whether from training videos or course content, suggesting that certain people or neighborhoods are more "dangerous" than others, must be resisted and countered.

5. APD should put in place a formal process to continue a community review of police training videos that were not reviewed previously by the recently concluded Community Video Review Panel. Once a process is formalized, ongoing consultation should occur between APD and the community panel concerning any new training videos proposed for use in future training courses to ensure that full community input is embedded into Academy planning and implemented in training. It is important, however, that videos are reviewed in the context in which they are to be taught, and not in isolation. To accomplish this, the panel must have the benefit of one or more instructors to explain how the video is intended to be used and in what context.
6. "Will-to-Win" (previously known colloquially as "Fight Day") should become a highly-regulated "Self-Defense" exercise near the end of Academy training, after cadets have been properly taught and tested on all appropriate defensive tactics, hand-to-hand encounters, and similar tactics.[226] This "Self-Defense" session should be video recorded (for internal review only) to ensure that appropriate levels of force are being used by the assigned instructor according to Academy protocols. We understand and agree with the need to prepare cadets for aggressive and hostile encounters, but "Will-to-Win" sends a message that implicitly affirms the "us vs. them" mentality that must be eliminated. It is one thing to properly prepare cadets for certain types of encounters and giving them the tools to protect themselves, but another thing to message that the object in hostile encounters with a member of the public is to "win" – which implies that someone must "lose." Officers must be trained on how to properly protect themselves and others, but proper messaging is crucial to ensure that the training exercise does not overtake the fundamental purpose of policing.

[226] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

- Kroll recommends a defensive tactics program that has cadets learn the basic skills starting early in the Academy, where cadets work with instructors and other cadets to learn proper defensive tactics before they are tested near the end of training, either with a controlled/supervised period of time in a ring or other scenario-based training. This will assist in team building and allow cadets to learn and build the skills to succeed.
- APD spends hundreds of thousands of dollars to recruit and conduct background investigations of cadets. Accordingly, every effort should be made to have cadets succeed by giving them the tools to do so. To reduce injuries, self-defense testing and challenges should occur after fitness training when recruits are warmed up and stretched out.
- Ensuring use of the phrases "defending oneself" and "self-defense" will also help address the "warrior vs. guardian" issue.

7. The use of the sandpit and having cadets carry sandbags as punishment for "messing up" should also be modified or eliminated.[227] The shift from stress reaction training to team-building exercises is a positive development; team-building exercises are important and necessary, as are physical fitness and conditioning. We understand that there is a certain level of physical and psychological stress associated with policing and with training. But the old-school manner of incessantly yelling and screaming at cadets, and other humiliation tactics, serve little purpose other than to instill a military-like, bootcamp atmosphere that is counterproductive to preparing officers to serve as guardians of the community.
8. The Academy should expand its physical fitness training to a daily regimen and this training should be separated from all academic content – except for physical training associated with self-defense and other defensive tactics.
    - Physical fitness, team building, and applying stressful situations to cadets should be completely separated from any academic training. Having cadets do extra pushups, sit-ups, and other exercises while properly attired in athletic gear during formalized physical training programs (when cadets have properly stretched and warmed up) will reduce injuries. The academic learning environment should be free of physical and unnecessary psychological stress. The rigors of learning coursework are stressful enough. Instead of carrying around sandbags for mistakes or shortcomings, for example, cadets could be required to write an administrative report about their failure and how they plan to address it. This will incentivize cadets to correct their mistakes while helping develop the skill most officers will spend considerable time doing throughout their careers (writing reports), while also documenting a non-subjective review of the cadet's progress.
9. As part of its community engagement programming, the Academy should proactively reach out to a wide variety of community leaders and activists who are willing to work productively with APD in presenting genuine community perspectives and concerns about public safety. This should include some of the department's harshest critics and other community voices with which APD has not traditionally engaged in active dialogue. This sort of community participation can be a mutually beneficial exercise that begins to slowly break down barriers of communication and enhance the learning experiences of the cadets. It is important to include the voices of some of the department's harshest critics among the invited participants in this programming.

[227] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

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10. To its credit, the Academy has scheduled "The History of Police and Race in America" that includes a specific focus on Austin into the 144th cadet class curriculum and is in the process of arranging for a locally based subject matter expert to co-teach the course with an African American APD sergeant. APD should ensure that the course covers the content outlined in the OPO-approved curriculum and is reinforced in other courses throughout the Academy.

11. The Academy should explore ways to implement additional community outreach and immersion strategies, such as having cadets spend time in a food pantry or homeless shelter, attend community meetings out in the neighborhoods, meet with local community leaders, and spend time visiting mental health and substance abuse programs.

12. The Academy should thoroughly review all other DEI-related courses and determine which may benefit from an outside, more academically oriented civilian content expert or a community perspective. Most of the DEI courses can be taught more effectively pursuant to a co-facilitation model that includes input and perspectives of civilian instructors or community members in the design and delivery of the training. These courses should be co-taught by APD instructors in cooperation with appropriate subject matter academic experts or community allies who can provide direct community examples, round out perspectives, and foster valuable community partnerships. It is important that the people presenting in these courses have credibility with both the community and law enforcement.

13. APD should tap into the resources of its existing officer base to temporarily assign some diverse officers of exceptional skills to assist with Academy instruction, particularly in courses where a diverse perspective would be beneficial and worthwhile (one of the recurring criticisms of the cadet surveys conducted by Dr. Ferguson was that the Academy often had non-diverse instructors teaching classes like multiculturalism and cultural diversity). For example, there is currently a diverse pool of officers in the Recruiting Unit who know and have existing relationships with cadets and who, with some additional training, could potentially supplement training staff and enhance the diversity of instructors teaching these courses.

    - Academy instructor recruitment could also be expanded to target experienced instructors from other police departments and talented individuals from local community organizations. Emphasis should also be placed on recruiting women, members of ethnic minority groups, and other underrepresented populations. This would help the Academy assemble a faculty that better resembles the demographic background of cadets and the diverse community the APD serves.[228]

14. The Academy should incorporate anti-racism and cultural diversity training into the Academy curriculum and as part of annual training for Academy instructors and supervisors (and eventually all officers). There are several valuable workshops and programs that could be utilized, including Beyond Diversity by Dr. Glenn Singleton and the Groundwater Analysis training workshop by Joyce James Consulting LLC that some APD leadership and Academy staff attended in 2020.

15. The Academy should reinstitute the practice of following-up with a cadet who leaves the Academy for any reason. The recruiter who had developed the relationship with the cadet might be able to identify an opportunity for the cadet to return to the Academy in a later class if circumstances allow. It also provides an opportunity for feedback to identify any changes needed in the training or recruiting process to ensure future success.

[228] Dr. Miguel Ferguson, Austin Police Department Training Academy Curriculum Review (April 5, 2021), 8.

16. The Academy should develop a mentorship program for all cadets, especially recruits of color, that will provide additional support for cadets and help them succeed at the Academy. These efforts would assist Commander Johnson with her stated desire to see Academy staff become more supportive and encouraging in helping all cadets succeed.
17. The Academy should revise the lesson plans and course content addressed in our review and recommendations of courses related to cultural competency training on pages 55 to 66 of this report, as well as the related Level I and II suggestions contained in Dr. Ferguson's curriculum review report of April 5, 2021.
18. The City should require an ongoing, independent review of the Academy by an outside evaluator once the 144th Academy class begins to ensure implementation of the above recommendations and to help ensure that further adjustments and improvements are made moving forward.
    - Kroll understands that many would like to see a completely revised training program that has addressed all issues before another class starts. We caution, however, that until instructors are actively training recruits, it will be difficult to fully assess whether the changes and recommendations currently being made or adopted are sufficient.

7.2 Long-Term Measures

To address some of the cultural and attitudinal concerns expressed by the community leaders we spoke with, and as outlined in the Community Video Review Panel report, Equity Assessment report, and the other consultant reports addressing APD training, we recommend the following:

1. To build on the positive collaboration between APD and the community in evaluating for bias and other inappropriate content in APD's training videos, APD and the City should consider working with a professional media literacy educator to help develop effective teaching videos moving forward that will have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy, and behavior. While it's one thing to analyze what one sees and hears, it's another thing to develop effective teaching videos as tools to undo ingrained bias, worldviews and attitudes that we all are born into, and how we have come to "interpret" living realities. It will take real knowledge and skills to overturn what is so embedded in the recruits that come to the Academy. This will be true regardless of race, gender, or class status.
2. APD should develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level, to increase the number of African American, Hispanic/Latinx, Asian/Pacific Islander, and female instructors assigned to the Academy prior to the start of the 145th Academy.
3. Academy class schedules should be revised to eliminate 40-hour blocks of course content to such things as Penal Code, Traffic Code, and Arrest Search and Seizure. These courses should be spread out over the length of the Academy, so that no more than two to four hours per day, three days a week are devoted to these important, but often dry and legally important subjects. Cadets need the opportunity to study and absorb the material that is taught, with an opportunity to ask questions and be tested in a progressive, cumulative manner. A revised schedule would also help combine the different course learning objectives into scenario training, which can prepare officers to apply their knowledge to patrol duties on the street. This type of training schedule has been used by numerous academies successfully to increase cadet graduation rates in Boston and other locations.

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4. Based on Kroll's initial review, we have learned that the physical fitness requirements at hire may not be predictive of the physical fitness requirements in the Academy, and the physical fitness requirements in the Academy may not positively correlate with the physical fitness requirements of police officers post-graduation. For example, we have been told that many female applicants pass the initial physical fitness test and many African American male applicants fail the initial physical fitness test, yet both of these groups seem to struggle with the physical fitness requirements at the Academy. We also understand that there are essentially no physical fitness requirements of police officers once they have graduated from the Academy. As such, further analysis and adjustments of these relationships are required to ensure that pre-Academy, Academy, and post-Academy physical fitness standards are consistent with successful job performance. These potential inconsistencies lend further credence to Kroll's suggestions about physical training requirements and sequencing at the Academy, although this will only partially address questions about the physical fitness required by APD.

5. The Academy should develop a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to officially starting at the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.

6. Although we understand that the ICAT training has been adopted by the department as required in-service training for all sworn personnel, APD should require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. Departments that have widely adopted and implemented ICAT in other parts of the country have seen a marked decrease in use-of-force incidents.

    - Up-to-date de-escalation training needs to be delivered department wide, reinforced through use-of-force policy, supported by field supervisors, and included as a component of use-of-force reviews. Without a holistic approach, training in the academy will be "undone" once cadets graduate and are in the field.

    - We also recognize the importance of the Community Video Review Panel (Panel) recommendations to this training. Some of the videos used in the Academy's existing ICAT training were offensive to the community because it reinforced stereotypes involving Black women and communities of color overall. PERF emphasizes that ICAT training is flexible and adaptable, encouraging that agencies be creative in how they incorporate the training modules into new or existing programs on de-escalation, tactical communication, or crisis intervention. Many agencies use different videos and scenarios that better fit within their organizational and community context. These videos could easily be changed without losing any training content.

    - The ICAT training provides comprehensive instruction on critical thinking, crisis recognition, tactical communications, continual assessment, and scenario-based training. As the Academy is in the process of implementing the Panel's recommendations regarding use-of-force videos, once there is a consensus among the Panel that the videos used are gender and racially appropriate, it will enhance the existing ICAT curriculum and provide an appropriate equity lens to APD officers during de-escalation training.

7. To promote instructor wellness and avoid burnout, low morale, and reduced job performance, there needs to be some recovery time built into the intervening period between cadet classes. We recognize police departments always strive to reach their complement of newly sworn officers, but

it is important to be mindful that instructors have little downtime from teaching between the end of one cadet class and the beginning of another (see Dr. Villanueva report, page 9).

8. Whereas studies have shown the effectiveness of procedural justice training programs (see Section 4, pages 17-18), APD should develop additional content to further emphasize the importance of procedural justice in its training. While the History of Police and Race in America covers historical abuses that have undermined public legitimacy, and while Professionalism and Ethics and Fair and Impartial Policing teach principles related to procedural justice, the Academy should consider covering these concepts in further detail, either by developing a separate course or adopting one already proven successful, like the Chicago Police Department's procedural justice training program.

9. While Kroll's analysis of APD's CIT training acknowledges the department's effort and successes in addressing concerns of inadequate responses to behavioral and mental health crises, APD should collaborate more extensively with outside mental health advocacy and treatment organizations to ensure a more holistic approach to mental health responses and allow responses to crises that do not involve law enforcement, whenever possible. Moreover, pursuant to the recommendations in the 2018 Office of the City Auditor Report,[229] the Meadows Institute Report,[230] and the University of Texas Report,[231] Academy training should increase its emphasis on reducing stigma of mental illness among officers and require regular refresher courses on CIT principles.

10. APD's General Orders on Duty to Intervene covers some basic tenets of peer or bystander intervention requirements. However, APD should continue research into effective peer intervention training programs like Ethical Policing is Courageous (EPIC) and Project ABLE (see Section 4, pages 24-25), and consider adopting these or similar programs to place a more thorough emphasis on the importance of dismantling 'the blue wall of silence'.

11. Whereas police training research has increasingly noted the importance of cognitive decision-making, emotional intelligence and regulation, and effective social interaction skills, Academy leadership should continue to research ways in which these topics can be covered in the Academy curriculum. We recognize that the Academy is already taking steps towards this end, investing in leadership training using emotional intelligence and updating psychological assessments according to up-to-date best practices.

FTO Program Recommendations: The following recommendations will serve to strengthen the FTO Program and address several of the concerns raised by the City of Austin and the community.

12. APD and the Academy should consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers. A common problem in many police departments is that, once certain practices are taught in the Academy, the new officer learns a "different way" of doing things on the street. This undermines what is taught at the Academy and compromises an academy's efforts in staying up to date with best practices and any positive reform measures implemented at the cadet training level.

13. To highlight the importance of the FTO Program and encourage the best candidates, additional incentives should be provided for participation as an FTO. Although officers who serve as FTOs

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[229] Office of City Auditor, "APD Response to Mental Health-Related Incidents".

[230] The Meadows Mental Health Policy Institute for Texas, "Recommendations for First Responder Mental Health Calls for Service".

[231] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings".

are provided incentive pay for their service, the program should also include other incentives, such as special uniform insignias, administrative leave days, and priority when it comes to selection for training opportunities.

14. The APD Field Training Officer Standard Operating Procedure should be amended to require the Field Training Program Coordinator and Academy staff to conduct focus groups with randomly selected trainee officers midway through the field-training cycle, as well as upon completion of field training and again six months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties. The focus groups should be designed to elicit issues encountered in the FTO program and to ensure that inconsistencies in training are identified and rectified.

    - Example of Focus Group Session Finding: *During X focus group session, the trainees found issues/no issues or discrepancies between Academy training and their FTO training. Trainees suggested that the training program should include more use of force option scenarios, as well as a new scenario where the trainee completes the entire call, including detention, report, stop data, and use of force report.*

15. *Consistency of Training*: The results of the above-noted focus group sessions should be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, and the affected Deputy Chief. If it is determined that there are any substantial discrepancies between what is taught in the Academy and what is taught in the FTO program, a determination should be made as to which is correct, and either the Training Academy or the FTO program should make the necessary changes so that the desired training information is consistent. If the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program, the review group should determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group should be documented and the information provided to the Chief of Police.

16. *Recruiting and Re-commissioning Combat Veterans*: APD should develop a protocol for psychological debriefings that address issues faced by combat veterans returning from military deployments to help reintegrate them into their law enforcement duties. Additionally, the strategies and resources employed should be extended to recruits that were recently discharged from the military to assess their mental health suitability for police employment prior to an appointment to the Academy. These resources should be used to assist military veterans' transition from military deployment to civilian law enforcement duties and help reprogram them concerning the proper use of equipment and tactics in domestic, community policing environments. The International Association of Chiefs of Police, in collaboration with the Bureau of Justice Assistance, U.S. Department of Justice, has published a *Law Enforcement Leader's Guide on Combat Veterans: A Transition Guide for Veterans Beginning or Transitioning to Careers in Law Enforcement*, which is a helpful resource for law enforcement leaders.[232]

[232] https://www.theiacp.org/sites/default/files/2018-08/LeadersGuide_300dpi.pdf

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8 APD IMPLEMENTATION / ACTION PLAN

On February 16, 2021, Kroll shared with the City and APD a set of preliminary findings and recommendations concerning our assessment of the APD Training Academy. Kroll's recommendations included a set of short-term and long-term recommendations, with the short-term recommendations to be implemented in time for the 144th cadet class. It was understood that the long-term recommendations would require additional time to implement, although they should all be achievable, or nearly so, by the start of the 145th cadet class.

The recommendations reviewed by APD in February, and presented to City Council on March 2, 2021, are largely the same as those outlined in Section 7 of this report. We have since added a short-term recommendation (number 17 concerning revising and updating Academy curricula on cultural competency training consistent with our comments on pages 55 to 66) and some additional long-term recommendations needed to (1) enhance the Field Training Officer Program and (2) close perceived gaps between Academy operations and national best practices in police training described in Section 4 of this report.

To its credit, APD leadership agreed to implement all of Kroll's recommendations. Meanwhile, Academy staff has worked diligently to begin implementing the recommendations. This has required substantial re-working of the course schedule for the 144th cadet class, which prior to Kroll's review was a planned 26-week training program that eliminated all but what APD deemed essential content to meet state mandated certification requirements and to train cadets on important tactics. The revised schedule details a 34-week program, which includes a two-week community immersion orientation program and 32 weeks of Academy training.

As a result, the planned Academy training program for the 144th cadet class now includes (1) 30 additional hours of community engagement programming (for a total of 37 hours), (2) a two-week community immersion orientation program, (3) a full day of Groundwater Analysis Racial Equity training for both Academy staff (prior to the start of classes) and cadets (as part of Academy curriculum), (4) a newly designed 8-hour course on the history of police and race in America to be co-taught with a local academic subject-matter expert, (5) near daily physical fitness training, (6) fewer week-long blocks of technical course content that will allow for more effective implementation of adult learning strategies, and (7) a formalized process of community input into, and academic civilian oversight of, training content and techniques to ensure that issues of racial equity and procedural justice are paramount considerations in all aspects of cadet training.

The below chart summarizes our present assessment of APD's efforts to implement and incorporate short-term recommendations prior to the start of the 144th cadet class, and APD's action plan and proposed timeline for implementing all recommendations (short-term and long-term) moving forward.

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#	Short-Term Recommendations	APD Responses / Action Plan
1.	Provide the new Division Manager with sufficient authority and the backing of APD leadership to implement and incorporate adult and active learning models into Academy instruction and to implement recommendations on pages 10-11 of Dr. Villanueva's Review Analysis and Strategic Plan.	*Completed.* APD hired and onboarded Dr. Anne Kringen on March 15, 2021, and made her a Division Manager, a civilian equivalent to Commander. This was affirmed by Interim Chief Joseph Chacon and Assistant Chief James Mason on March 30, 2021 at a meeting with Academy staff. Dr. Kringen is currently working with instructors to update curriculum to include active learning strategies and content, with a plan to complete all updates before the start of the 144th cadet class. Dr. Kringen will report any issues directly to Executive Staff.
2.	Hire a Training Supervisor to assist the Division Manager in updating and standardizing curriculum according to the adult and active learning models.	*In progress.* Reclassification from a Training Specialist to a Training Supervisor was approved and finalized during the first week of April. APD has since posted the position and received 10 applications to date.
3.	Procure and implement an automated Learning Management System (LMS) by the start of the 145th cadet class.	*In progress.* Two vendors for LMS have been selected and are currently being evaluated by APD. A second round of demonstrations will be conducted by mid-April, after which a final contract will be negotiated. APD expects full implementation of an automated LMS by October 2021, prior to the start of the 145th cadet class.
4.	Create an internal curriculum review committee to evaluate current syllabi and curriculum for each class. a. Evaluate for ways to incorporate DEI content into all aspects of training. b. Ensure that messaging throughout Academy training consistently emphasizes the ethical responsibilities of policing and a sensitivity to community concerns.	*In progress.* Dr. Kringen is establishing an Academy Curriculum Review Committee and has provided Kroll with a preliminary list of committee members. The current list of confirmed and potential members includes two APD sworn personnel, two representatives from local academic institutions, one or two staff members of Victim Services, three community representatives, and one or two members of the Community Video Review Panel. The Division Manager is currently reviewing curriculum for DEI content inclusion. All classes will be reviewed prior to the start of the Academy, with a completion due date of May 31, 2021.
5.	Establish and formalize a process to continue the work of the Community Video Review Panel (Panel) to allow for regular community review and input into police training videos that were not reviewed previously.	*In progress.* All videos flagged by the previous Panel are in the process of being replaced if an alternative is available. Where replacement videos have not been identified, Dr. Kringen has been provided the authority to replace such instruction by other adult learning means. The previous Panel met with Dr. Kringen on March 31, 2021. Next steps included introducing Dr. Scott Bowman, who has agreed to serve as a new member, and finalizing committee members that want to stay on. The second Panel meeting occurred on April 20, 2021. The new Panel will meet regularly thereafter pursuant to the formal process. A panel member is also scheduled to meet with Academy instructors on April 28, 2021, to better understand staff perspectives.

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6.	Replace "Will-to-Win" with a "Self-Defense" exercise near the end of Academy training. a. Institute a defensive tactics program early in the Academy that teaches cadets proper defensive tactics before they are tested in aggressive fight scenarios. b. Testing and challenges should occur after Physical Training when recruits are warmed up and stretched out to reduce injuries.	*Approved (to be evaluated).* "Will-to-Win" has been replaced by a "Self Defense" exercise that will occur after cadets have been fully exposed to defensive tactics instruction. The current schedule shows this exercise occurring in week 23. Cadets will have previously received training in all aspects of defensive tactics, as well as communication, de-escalation, and community engagement. The lesson plan will be reviewed by mid-April to ensure proper implementation of this exercise. APD will ensure to emphasize "defending oneself" and "self-defense" to address the "warrior vs. guardian" issue and will ensure that cadets are properly warmed up and stretched to reduce potential injuries. The course curriculum will be reviewed to ensure messaging is consistent throughout.
7.	Modify or eliminate sandpit and sandbag exercises and other military-style punishments.	*Completed.* This practice has been eliminated as of Feb. 1, 2021, per instruction of APD leadership.
8.	Expand physical fitness training to a daily regimen and ensure that physical fitness, team building exercises, and other physically and psychologically stressful exercises are completely separated from academic, classroom-based training.	*Approved in part (to be evaluated).* APD has agreed to separate academic training from physical fitness, team building and other physically and psychologically stressful training exercises, and to place all physical fitness activities on the calendar. APD has incorporated daily PT into the calendar for the first 12 weeks of Academy training and scheduled PT for 3 times per week in the remaining 18 weeks of training.
9.	Proactively reach out to community leaders, activists, and critics who are willing to work productively with APD to present genuine community perspectives and concerns about public safety as part of Academy training and community engagement programming.	*In progress (insufficient at present).* Academy staff, with the help of OPO, has identified a preliminary list of community groups that they believe could assist in this effort. Dr. Kringen has worked with Academy staff to proactively research potential community partners, identify points of contact within each organization, and reach out to the various points of contact by email. Starting on April 19, 2021, Academy staff began evaluating responses from each organization to determine willingness to participate and potential topics of discussion that can provide added perspective to cadet training or existing course content. APD plans to have the individuals/groups identified by the first week of May.
10.	Ensure "The History of Police and Race in America" course covers the content outlined in the OPO-approved curriculum, and that this and other DEI-related content is reinforced throughout the Academy.	*In progress.* The "History of Police and Race in America" has been added to the curriculum and discussions are ongoing to finalize arrangements for a local academic expert to co-teach the class. The Division Manager and Academy Curriculum Review Committee will review other courses to ensure the information taught is reinforced throughout the Academy. This review is to be completed by May 31, 2021.
11.	Implement additional community outreach and immersion strategies.	*Approved.* APD has added 30 hours of scheduled time to focus on community engagement programming, including outside speakers from community organizations. APD also plans to have

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		cadets spend time in a pre-academy environment working directly with Recruiting and District Representatives to meet this recommendation for the 144th Academy, in partnership with community leaders and organizations. The program will be finalized by May 31, 2021.
12.	Thoroughly review all other DEI-related courses to determine which courses can be effectively co-taught by an outside civilian or academic content expert with an APD instructor.	*In progress.* APD is working with the Equity Office and APD's Equity Manager on several areas of the Recruiting and Academy process. Dr. Kringen is working with Meme Styles of Measure to create a data course with APD's research and planning team. Other academics have been consulted to co-teach. These steps should be finalized by May 31, 2021.
13.	Use existing officer base to temporarily assign diverse officers of exceptional skills to assist with Academy instruction to increase diversity of Academy staff.	*On-going.* The Academy has reached out to the different affinity groups to help recruit qualified and diverse officers to fill the vacant positions as they occur. This will be an on-going process and positions will be filled as they become vacant. APD has agreed to utilize adjunct instructors to increase the diversity of current instructors.
14.	Incorporate anti-racism and cultural diversity training and workshops into the Academy curriculum.	*Approved.* APD has confirmed with Joyce James Consulting LLC that the Groundwater Analysis training workshop will receive TCOLE credit for Cultural Awareness. The contract includes training for the training staff, cadets, and all APD sworn and civilian staff. OPO is working with the Equity Office and APD to ensure that Academy staff takes the workshop prior to the start of the 144th cadet class.
15.	Reinstitute practice of following-up with a cadet who leaves the Academy for any reason.	*Approved.* APD has indicated that this practice shall become part of standard operating procedure. Dr. Kringen is reviewing the previous practice and reworking the exit interview process. Completion expected by May 1, 2021.
16.	Develop a mentorship program for all cadets, especially recruits of color.	*In progress.* A Women's Mentoring Group has been established and Dr. Kringen and staff are currently evaluating the lessons learned from this group, along with input from affinity groups, to determine how best to proceed with additional mentoring opportunities. APD plans to work with Joyce James Consulting to build a comprehensive mentoring program for all cadets.
17.	Revise the lesson plans and course content addressed in our review and recommendations of courses related to cultural competency training on pages 55 to 66 of this report, as well as the related Level I and II suggestions contained in Dr. Ferguson's curriculum review report of April 5, 2021.	*Pending Consideration.* Dr. Kringen is currently working with instructors to update Academy curriculum to include Kroll's recommendations (and the recommendations of Dr. Ferguson supported by Kroll). As of April 15 2021, all 68 classes within the Cadet Training Unit have been evaluated under Phase 1, including incorporating an active learning activity in each lesson plan. All updates will be completed before the start of the 144th cadet class.
18.	Require an ongoing, independent review of the Academy by an outside evaluator once the 144th cadet class begins to ensure implementation of the short-term recommendations	*In progress.* APD is working with the City Manager's Office to implement this recommendation.

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#	Long-Term Recommendations	APD Responses / Action Plan
1.	Consider hiring a renowned national leader in "media literacy" to help develop effective teaching videos that have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy, and behavior.	*Pending.* The Division Manager has been tasked with implementing a roadmap for this recommendation. She first needs to discuss internally to understand the CMO's expectations and budget.
2.	Develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level.	*On-going.* The Academy has already instituted several measures, including reaching out to the different affinity groups to help recruit qualified and diverse officers to fill vacant positions as they occur. This will be an on-going process and positions will be filled as they become vacant. Meanwhile, APD plans to utilize adjunct instructors as needed to increase the diversity of current instructors.
3.	Revise Academy class schedules by eliminating 40-hour blocks of dry but legally important course content for such things as Penal Code, Traffic Code, and Arrest Search and Seizure, as these courses should be spread out over the length of the Academy (no more than two to four hours per day, three days a week).	APD has split up Penal Code and Traffic Code for the planned 144th cadet class. At this time, the instructors do not believe that Arrest Search and Seizure should be split up. APD will closely monitor test scores to ensure that the cadets are effectively retaining their knowledge of Penal Code and Traffic Code.
4.	Further analyze the relationships between pre-Academy, Academy, and post-Academy physical fitness standards to ensure they are consistent with successful job performance.	*Pending.* TCOLE does not have any physical fitness standards post-graduation. For the past two legislative sessions, bills have been introduced with little success to set standards for officers (post-graduation). APD has been working for the past several years to set a baseline for physical fitness and will continue to move this project forward.
5.	Consider developing a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.	*In progress.* APD plans to incorporate a Community Connect plan beginning with the 144th Academy. The proposed plan will have cadets spend time in a pre-academy environment working in the community directly with Recruiting and District Representatives to fulfill this expectation and bring depth to the Academy experience. Further adjustments will be made if needed for future cadet classes.
6.	Require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. a. Reinforce training through use-of-force policy, ensure support of field supervisors, and include as a component of use-of-force reviews. b. Modify the videos shown in ICAT training to be consistent with Community Video Review Panel recommendations.	*Completed.* APD considers de-escalation one of the golden threads through which all Academy training is incorporated. This item has been completed; but it will continue to be a focus area of all future curricula reviews. In addition, the department plans to ensure de-escalation training is built into the mandatory in-service training. Before videos are used in de-escalation training, APD will make sure that they have been reviewed by the Community Video Review Panel.
7.	Build recovery time into the intervening period between cadet classes to promote instructor wellness and avoid burnout, low morale, and reduced job performance.	*In progress.* APD is working towards a schedule that allows sufficient time for academy trainers to refresh and not be overloaded with back-to-back classes.

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8.	Develop additional content to further emphasize the importance of procedural justice in Academy training; consider developing either a separate course or adopting one already proven successful, like the course developed by the Chicago Police Department.	*Under consideration.* Through the History of Police and Race in America, the Academy covers the past actions of police that have undermined public legitimacy (which is part of the Chicago procedural justice course). APD plans to look further into covering the concepts of procedural justice as part of this course, the Fair and Impartial Policing course, or by developing a separate course for future classes.
9.	Build additional collaborations with outside mental health advocacy and treatment organizations beyond CIT training, and consider placing a greater emphasis on reducing stigma of mental health among officers either through CIT training or additional courses.	*Under consideration.* APD is in contact with members of the Baltimore Police Department (BPD), whose Collaborative Planning and Implementation Committee (CPIC) has worked to form relationships between BPD's training department and various behavioral health entities. APD plans to reach out to various stakeholders in Austin related to behavioral health for potential future collaboration.
10.	Continue research into effective peer intervention training programs like Ethical Policing is Courageous (EPIC) and Project ABLE, and consider adopting these or similar programs.	*Under consideration.* Currently, some of the basic information related to peer intervention is part of APD's General Orders on Duty to Intervene. However, APD understands from research into ABLE that the duty to intervene may not cover how officers can intervene. In the short term, APD is working with Proactive Alliance training, which includes a component of bystander training; instructors will receive the training in June 2021. Given the commitment to the 10 ABLE Standards and the need for restrict class instruction to 25 individuals or less, APD is continuing its research into the feasibility of this training for the department.
11.	Continue to research ways in which cognitive decision-making, emotional intelligence and regulation, and effective social interaction skills can be covered in Academy curriculum.	*Under consideration.* APD is investing in leadership training that uses concepts in emotional intelligence. Additionally, the department has updated its psychological testing platform to the newest version of the Minnesota Multiphasic Personality Inventory (MMPI)-3 as the standard psychological assessment tool for recruits. APD will continue to investigate and research exactly how to integrate these concepts into the basic Academy curriculum or the continuing education of officers' post-graduation.
12.	Consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers.	*On-going.* FTOs are required to attend annual refresher training at the Academy to remain current and up to date with respect to what is being taught in the Academy. The Academy has an FTO Liaison who works directly with FTO's in the field. Instructors are required to ride out in the field once a quarter to ensure that Academy training is in line with patrol operations and the FTO program.
13.	Provide additional incentives for participation as an FTO to encourage the best candidates.	*Pending consideration*
14.	Amend FTO Standard Operating Procedures to require the FTO Coordinator and Academy staff to conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six months after	*Pending consideration*

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	completion to determine the extent to which the Academy prepares new officers for their duties.	
15.	Review the results of the above-noted focus group sessions with the Training Division Commander, the FTO Program Coordinator, and the affected Deputy Chief to ensure consistency between lessons from the Academy and lessons learned in the FTO program; document results and provide information to the Chief of Police.	*Pending consideration*
16.	Develop a protocol for psychological debriefings of APD combat veterans returning from military deployments to help reintegrate them back into law enforcement duties; assess recently discharged individuals' mental health suitability for police employment and assist military veteran recruits' transition from military deployment to civilian law enforcement.	*Pending consideration*

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9 CONCLUSION

It is not possible to achieve perfection in policing or police training. The Austin Police Department and the APD Training Academy are human institutions, so building a long-term system of internal and external review of training methods and Academy effectiveness is essential to institutionalizing the search for excellence. Training police officers to become community-oriented, empathetic, compassionate, and resilient guardians of the public in a dynamic and diverse city, while promoting officer health and wellness, is a constantly evolving process. For this reason, police academies should be in a constant state of review and improvement. As noted in the CCJ Task Force:

> *Even if training programs are grounded in research and have been proven effective, training alone is not sufficient to prepare officers to police in a respectful, constitutional manner that comports with agency policies and prioritizes the preservation of life. Training should be accompanied by clear, detailed written policies and buttressed by engaged supervisors who model practices in accordance with training principles and agency policy – and hold officers accountable when they are out of compliance.*[233]

The recommendations outlined in this report are intended to be a springboard from which APD can continue to make a good department even better, one more attuned to the pulse of the Austin community and the demands of policing a diverse, vibrant, and progressive city in 2021. The old way of doing things no longer works. Genuine police reform is needed throughout the United States. It all starts with training.

Based on APD's efforts to date in implementing Kroll's short-term recommendations—as outlined in Section 8 of this report—and with the plans set forth by the Division Manager for achieving all short-term recommendations by May 31, 2021, we believe that a state of readiness for the 144th cadet class is achievable by this summer, or whenever reasonable as determined by the City Council and City Manager's Office. Although how effectively the Academy implements the recommendations outlined in this report will need to be independently evaluated once the Academy is up and running, there is no current reason to believe that this cannot be accomplished with the continued effort of APD leadership and Academy staff. Ultimately, the hard work of establishing a long-term foundation for a resiliency-based, guardian-centric, community-oriented police department has only begun.

[233] https://councilonci.foleon.com/policing/assessing-the-evidence/iv-effectiveness-of-police-training/

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10 APPENDIX

10.1 Kroll Project Team



John R. "Rick" Brown is a former Lieutenant Colonel and Deputy Commissioner for Administration and Professional Responsibility of the Pennsylvania State Police (PSP). During his 29-year tenure, Brown oversaw the PSP's reform and accountability efforts in the areas of misconduct, sexual harassment, use of force, and early intervention/risk management initiatives. He developed the PSP's Equal Employment Opportunity Office's statewide liaison program and had oversight of citizen complaints that alleged discrimination or disparate treatment. Brown also oversaw the PSP's five-year Police-Citizen Contact Project, which utilized applied research techniques to assess the extent to which PSP officers engaged in racial or biased-based policing. Brown subsequently oversaw the implementation of proactive training and operational strategies to monitor and prevent racial profiling. In 2010, following a distinguished career in law enforcement, Brown created Transparency Matters, LLC, a certified Minority-owned Business Enterprise ("MBE") that focuses on building transparent policing policies and process change that provides organizational efficiencies, accountability, diversity, community education, training, and monitoring.



Daniel Linskey, former Superintendent-in-Chief of the Boston Police Department, is a nationally renowned expert in urban policing, training, and police-community relations. As Head of the BPD from 2009 to 2014, Chief Linskey developed and oversaw the BPD's social media, recruitment, community outreach, and engagement strategies, which have been cited as among the best practices in police management in the United States. Chief Linskey also changed the management and response of BPD to large-scale public disorder events. He oversaw the peaceful and successful management of the Boston Occupy movement and earned an international reputation at planning and overseeing major special events, and as the Incident Commander during the Boston Marathon Bombing Attack. Chief Linskey was part of a team sent to St. Louis County to assist the Department of Justice with an assessment of the St. Louis County Police Department and collaborative reform project following the events in Ferguson, Missouri in 2014. He is a frequent commentator on proper police tactics for national news organizations.



Dr. Robin Engel, a Professor of Criminal Justice at the University of Cincinnati ("UC") and Director of the UC Center for Police Research and Policy, is a nationally recognized expert on biased-based policing and one of the top-ranked female academics in the country. Dr. Engel has studied and written extensively on biased-based policing and worked with police departments throughout the United States to help them improve and reform. She has published over 60 peer-reviewed articles and book chapters and conducted research on such topics as biased-based policing, police-community relations, police use of force, police use of discretion / decision making, police legitimacy, violence reduction initiatives, reform efforts, and problem-oriented policing. Dr. Engel has conducted statistical analyses examining racial/ethnic disparities in policing outcomes for over a dozen jurisdictions.



J. Larry Mayes is serving as a Project Advisor on community engagement strategies and civilian input into police internal investigations. Mayes has worked with government officials and community leaders for more than two decades. From 2004 to 2010, Mayes served as the Cabinet Chief of Human Services for the City of Boston, where he led joint government/community-based initiatives to reduce crime and stabilize communities. Currently he serves as Vice President of Programs for Catholic Charities in Boston, where he leads the organization's statewide programs on adult education, immigration resettlement and legal services, childcare, and new poverty strategies. In 2014, Mayes was appointed to the Community Ombudsman Oversight Panel, which reviews the BPD's Internal Affairs citizen complaint cases.

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Dr. Cassi L. Fields is an expert in the design, development, validation, and administration of large-scale public safety human capital projects, with special expertise in selection and promotional systems in organizations with a history of alleged employment discrimination. Dr. Fields has pioneered many of the nation's most successful human capital selection initiatives, promotion and training programs, and routinely teaches and writes about implicit bias. Since receiving her Ph.D. in 1989, Dr. Fields has dedicated her career to helping public safety agencies remove roadblocks for people of diverse backgrounds compete for promotions. She has developed hundreds of assessment centers for police, fire, and sheriff departments throughout the United States.



A.J. Bingham is serving as an advisor in multi-cultural community outreach in Austin, facilitating local community input into police-citizen interactions, and providing insight into Austin's business, civic, and non-profit communities. Bingham is Founder and CEO of The Bingham Group, LLC, a City of Austin-certified MBE, and full-service consulting firm that represents and advises clients on legislative and regulatory matters throughout Texas. An Austin native, Bingham is active in the community and serves on the boards of the Young Men's Business League of Austin, the Austin Trail of Lights Foundation, and the Long Center for the Performing Arts. A lawyer by background, Bingham received his B.A. in Political Science from Wake Forest University, and law degree from Washburn University School of Law.



Mark Ehlers is the Engagement Leader of Kroll's work with the City of Austin. Ehlers has 35 years of combined legal and investigative experience in the public and private sectors, specializing in government and university investigations, discrimination and harassment in the workplace, and alleged ethical violations. He is currently a managing director in Kroll's Philadelphia office. Prior to joining Kroll, Ehlers served for 18 years as an Assistant United States Attorney, first in the District of Columbia, where he served in the Homicide and Sex Offense Units, and later in the Eastern District of Pennsylvania, where he served on the Organized Crime Strike Force. Since joining Kroll, Ehlers has conducted numerous internal investigations and best practice reviews for a diverse array of public and private sector clients, including the University of Cincinnati Police Department (review and investigation of a UCPD officer's fatal shooting of an unarmed motorist) and North Carolina State Highway Patrol (review of hiring and selection practices, training and supervision following public reports of police misconduct), among others. Ehlers received a B.A., *magna cum laude*, from Wittenberg University, and a J.D., *with honors*, from George Washington University.

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About Kroll

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Case No. 1:22-cv-655

COMPLAINT
EXHIBIT F

RESOLUTION NO. 20191205-066

WHEREAS, the City of Austin is committed to undoing its racist past and combatting and denouncing racism in present-day Austin; and

WHEREAS, the City of Austin acknowledges that the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy; and

WHEREAS, the Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates; and

WHEREAS, the APD's state-mandated racial profiling reports consistently show that Black and Latino drivers are more than twice as likely to be searched as their white counterparts during traffic stops despite similar "hit rates", including in 2018 where 6% of traffic stops of white drivers resulted in a police searches compared to 14% for Latino drivers and 17% for Black drivers; and

WHEREAS, APD data provided per Council Resolution No. 20180614-073 (one of the Freedom City Resolutions) showed that in 2017 APD police officers made discretionary arrests of Black people at more than twice the rate of either white or Latino residents; and

WHEREAS, that same 2017 data also showed Black and Latino residents accounted for just under 75% of those discretionary arrests for driving with an invalid license, although the two groups combine to make up less than 45% of Austin's population; and

WHEREAS, that same 2017 data also showed that one out of three discretionary arrests for misdemeanor marijuana possession involved a Black resident even though less than one in ten Austinites is Black, though usage rates of marijuana are similar across racial groups; and

WHEREAS, per the quarterly report for Council Resolution No. 20180614-073, issued by APD on May 3, 2019, Black people still comprised 32% of persons arrested by APD for offenses eligible for citation, which, proportionally, amounts to more than three times Austin's Black population; and

WHEREAS, an anonymous whistle-blower has recently accused an Assistant Chief of the Austin Police Department of using racist epithets and derogatory terms, including "negro" and "nigger," to refer to specific Black elected officials and sworn officers of the Austin Police Department; and

WHEREAS, following the public release of the anonymous complaint and subsequent resignation of the Assistant Chief named in the complaint, the City Manager announced on November 7, 2019 a third-party investigation into the allegations that the

use of racial slurs and epithets lasted over a period of many years with the knowledge of other leadership at APD; and

WHEREAS, the Mayor's Task Force on Institutional Racism and Systemic Inequity recommends that the City of Austin create protocols to ensure the cultural competency of all personnel, and that the City of Austin's law enforcement agencies engage in continuous diversity and inclusion training, with special attention to implicit bias training; and

WHEREAS, in 2018, the Office of Police Oversight was created to augment accountability and transparency at APD, and that the department could benefit from expanded access and resources; and

WHEREAS, the Austin Police Department presented a training plan during the City of Austin FY2019-20 budget deliberations indicating its intention to graduate almost 200 new cadets in Academy classes scheduled to start in February 2020; and

WHEREAS, attrition rates in recent cadet classes exceeded expectations in at least the last five cadet classes, reaching as high as 49%, suggesting that there exist issues with recruitment and cadet preparedness; and

WHEREAS, while assessment center panels were recommended as a method to counter the potential bias in written exams for promotion of APD officers, there are concerns that the system does not accomplish this goal and in fact may have the opposite impact; and

WHEREAS, patterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust, which is necessary to effectively enforce the law, solve crimes, and maintain public safety, and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The Council supports the investigation initiated by the City Manager into the allegations against a former APD Assistant Chief. The City Manager is directed to provide an update and publicize resulting findings to Council by January 23, 2020.

BE IT FURTHER RESOLVED:

Effective on January 23, 2020, the City Manager is directed to initiate a comprehensive, multi-pronged investigation and evaluation of the extent to which forms of bigotry and discrimination are present in the protocols, practices, and behaviors of the officers of the Austin Police Department. To the extent to which they are present, this investigation and evaluation shall document the impacts these individual and systemic biases have had on hiring, professional ranking, and treatment of personnel within APD, as well as police interactions with people of color and other marginalized groups in Austin.

The investigation should begin with an immediate focus on patterns of prejudiced behavior and institutionalized bigotry in the following high-priority areas:

1. Officer and supervisor communications, including all public posts on social media platforms that are available to the investigator, City email, and text messages and instant message communications on City devices within the last 5 years; and
2. Recruitment practices and protocols, efforts to ensure ethnic and gender diversity and inclusion in recruitment, and assessment of academic resources available to cadets.

Investigation of these high-priority areas of focus should result in an interim report that includes analysis of expressed behavior and patterns, and any immediate recommendations for reform presented publicly to the Council no later than December 7, 2020.

Investigation into and analysis of the following areas of focus should begin concurrently:

3. APD's compliance with state and federal law with regard to racial and sex discrimination in employment;
4. The basis for the weighting of assessment center panel scores in the professional ranking and promotion of APD officers, including the degree to which the use of assessment centers counters potential bias or disparate impact in the promotion process, if at all, and best practices for the transparency and use of assessment

centers in ranking, and the appropriate weights for promotion consideration at each officer level;

5. All use-of-force incident reports from June 2019 to November 2019, analyzing them by location, any resulting charges, the outcome of each incident, and demographic information including race, ethnicity, and language spoken of all persons involved;
6. Aggregate data on every recorded interaction from June 2019 to November 2019 with any member of the public, including type of interaction and its outcome (search, arrest with charges, citation with charges) and an evaluation on whether there are racial and/or ethnic or other disparities in searches, arrests, charges and citations;
7. Complaints made against officers and executives accused of bias and/or discrimination, including complaints that did not result in disciplinary action and the reason that no disciplinary action was taken in each case, for the last 10 years; and
8. Incidents leading to lawsuits for alleged police misconduct, and analysis of the outcomes and subsequent settlements of those lawsuits, including the amount of each settlement, over the last 10 years.

The evaluating entity will issue a final report no later than December 6, 2021, that details any patterns of systemic racism, racist behavior, and other forms of

discrimination found in all the above areas of focus, to include recommendations to remedy and prevent patterns of bias, remedy and prevent patterns of bias, including but not limited to:

- An actionable plan, measurable benchmarks, and appropriate timeline for eliminating racial disparities in APD stops, searches, arrests, and use-of-force incidents;
- A framework for regularly recurring reporting to the Public Safety Commission and Council on APD's progress towards achieving the fair administration of justice, an indicator in the Council-adopted five-year strategic plan;
- Reporting to the Public Safety Commission and Council on the plan to address and remedy any weaknesses and threats for APD as may be identified in the Equity Office's equity assessment tool;
- Continuing education for active APD personnel as part of the required biennial recertification process on topics including implicit bias, racial and ethnic bias, gender bias, de-escalation, the history of policing and its intersection with race in our community, cultural competency, and other topics as recommended by the Equity Office and Office of Police Oversight;
- Reputable leadership training that would benefit APD organizational culture;
- Establishing clear, published standards as it relates to the qualifications required for appointment to Assistant Chief as consistent with state law;

- Creating measurable benchmarks for enhancing diversity at all levels of the department;
- Improving background checks and screening of incoming cadets as well as active officers being considered for promotion as it relates to topics such as explicit and implicit bias, racism, homophobia, gender bias and other forms of discrimination; and
- Creating a regular reporting structure to Council detailing cadet academy class sizes, attrition rates and demographics as well as active officer attrition rates and demographics.

The report to Council should include options for a mechanism to incorporate the aforementioned recommendations and accountability metrics into the performance standards for the APD executive team.

The City Manager is directed to work with and incorporate results from any relevant work that has been conducted or is being conducted by the Equity Office, the Office of Police Oversight, and the Innovation Office as it relates to APD.

BE IT FURTHER RESOLVED:

The independent investigation and examination shall be conducted by an independent third party with substantial experience in the evaluation and investigation of police misconduct, bias, and claims in employment law and Title VII violations, as

well as in assessing systemic conditions that engender civil rights violations, including both organizational decision-making and greater policy-making rules and patterns.

The City Manager shall develop the scope of work and qualifications for the solicitation of the evaluating entity with input from the Joint Inclusion Committee, the Public Safety Commission, and community organizations that advocate for racial justice, equity, and criminal justice reform as allowable by the City's purchasing rules. The City Manager shall determine the appropriate funding sources when recommending the contract for Council approval.

The City Manager is also directed to collaborate with the Equity Office and the Office of Police Oversight in a joint oversight capacity regarding the selection and supervision of the independent investigating entity, to the extent allowed by the City's procurement policies.

BE IT FURTHER RESOLVED:

Separately from the independent third-party investigation that is to be completed no later than December 6, 2021, the City Manager shall initiate an audit of the Austin Police Department's training materials, course/section descriptions and duration, and description of any other procedures (e.g. detailed descriptions of scenarios) administered to cadet classes and to active officers related to training on communication strategies, cultural competency, acknowledging and addressing bias, use of force, de-escalation, search, proactive policing, mental health response, protocols for non-English speaking

persons, protocols for disabled persons, recognizing resistance and the rules and procedures that define resistance and their evaluation protocols, as well as the course/section content and duration of all other coursework required at the cadet academy and their evaluation protocols. The City Manager may work with and incorporate results from any review of APD hiring and training protocols that has been conducted or is being conducted by the APD's training specialist, the Equity Office, the Office of Police Oversight, and the Innovation Office.

The City Manager is directed to update or revise training materials for APD to the extent necessary to remedy any findings from the audit. This process should be as transparent as possible, ensuring that the public has access to view training materials on the topics of bias, racism, and cultural competency in policing. The audit is to be completed and reported to Council no later than June 1, 2020.

During this process, the City Manager will track and report on the following milestones:

- Training conducted at the Austin Police Academy related to reducing bias, increasing de-escalation, reducing racial disparities in use of force and severity of force, reducing racial disparities in discretionary searches, and improving communication with all individuals regardless of language, ethnicity, sexual orientation, gender identity or disability;

- Recruiting and retention and practices and procedures with a focus on whether those practices and procedures could be improved to retain ethnic and gender diversity in cadet classes, and whether those practices and procedures, including the use of disqualification codes for cadets, have a disparate effect or impact based on race, ethnicity, national origin, sex, religion, sexual orientation, or gender identity, etc.;
- Current training priorities based on hours on each topic and the overall balance of training with a focus on whether training should be re-balanced to reduce bias, increase use of de-escalation techniques, and improve culturally effective communication, and trauma-informed policing;
- Cadet training scenarios with a focus on reviewing whether the scenarios teach officers to use all strategies to de-escalate and communicate effectively in the situations statistically most likely to occur on their shifts;
- Identify police academies that have successfully revised training resulting in reduced force incidents and improved communication with diverse communities, including police Academies in Cambridge, Washington (Washington State Criminal Justice Training Commission) and Minneapolis, Minnesota and conduct site visits and review training reforms; and
- Improvements in training should be finalized with the input and participation of community groups representing those disproportionately affected by policing,

including those representing non-white residents and populations, non-English speaking residents and populations, LGTBQIA+ residents and populations, and residents and persons with disabilities.

Following the start of the cadet class scheduled to begin in February 2020, the City Manager shall ensure that no new cadet classes are to be initiated until this audit is completed, revisions to the curricula per the milestones above and new training materials, if necessary, are implemented, in order to resume cadet classes no later than September 2020. If the aforementioned revisions have not been implemented at least 30 days ahead of the start date for the anticipated June 2020 cadet class, the cadet class may be rescheduled as deemed appropriate by APD so long as the revisions have been implemented by the new start date. When classes resume, space will be made available for an independent party to audit classes and instruction.

BE IT FURTHER RESOLVED:

The City Manager shall issue biannual updates on the progress of the independent third-party investigation, to include relevant updates on the solicitation process and anticipated timelines for the investigation to proceed.

ADOPTED: December 5, 2019 **ATTEST:** _____
Jannette S. Goodall
City Clerk

Case No. 1:22-cv-655

COMPLAINT
EXHIBIT G

URBAN INSTITUTE

Center For POLICING EQUITY

The Science of Policing Equity

Measuring Fairness in the Austin Police Department

Phillip Atiba Goff, CENTER FOR POLICING EQUITY & JOHN JAY COLLEGE OF CRIMINAL JUSTICE
Dean Obermark, Nancy La Vigne, and Jennifer Yahner, URBAN INSTITUTE
Amanda Geller, NEW YORK UNIVERSITY

October 2016 (revised May 2017)

Public trust in law enforcement is alarmingly low in many communities nationwide, particularly in those experiencing violent crime coupled with intensive police presence. Research shows that positive police-community relationships are crucial for safer communities: citizens are more likely to engage as witnesses and as partners in crime reduction if they believe in the legitimacy of police as equitable and impartial agents of the law.[1] Yet many community members perceive law enforcement activities to be targeted toward—and biased against—nonwhite people.

Communities wracked by highly publicized shootings of unarmed people of color have called for both greater transparency and accountability on the part of the police. Likewise, law enforcement executives desire hard metrics on current practices and a way to measure changes in response to policies aimed at reducing bias and improving police-community relations.

This brief aims to address the needs of both communities through collaboration between two initiatives: The Center for Policing Equity's **National Justice Database** (NJD) and the White House's **Police Data Initiative** (PDI; see text box). Both NJD and PDI emphasize the importance of collecting and making transparent police data to measure fairness and improve policing equity. NJD also emphasizes applying a rigorous analytic framework to examination of that data.

This brief applies the NJD analytic framework to publicly available PDI data. It focuses on the Austin Police Department (APD) in Texas, one of the first agencies to make its data available through PDI. Importantly, analyses were conducted *independent of any law enforcement agency funding*. In this research brief we present empirical documentation of the degree of racial and ethnic disparities in Austin's policing practices, as well as possible interpretations of such differences.

Our purpose is to demonstrate what can be learned by thoroughly analyzing democratized data. We empirically document the degree of racial and ethnic differences in Austin's policing practices, as well as possible interpretations of such disparities. We hope the brief provides law enforcement officials

with a road map for greater transparency and accountability in police practices, so they can transform agencies to adopt more just and equitable means of promoting public safety.

Highlights

The pages that follow present analyses of APD traffic stops and searches, as well as APD officers' use of force, for the calendar years 2014 and 2015. For both yearly analyses we isolate race and ethnicity, exploring differences in practices and modeling these outcomes of interest while controlling for competing factors, such as place-specific crime rates. The raw data point to disparate treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty.

These findings demonstrate that even in an agency such as the APD, which is instituting reforms aimed at enhancing equity in policing, unwelcome disparities remain, indicating that more work is needed within and beyond law enforcement agencies. Our research also underscores the value of rigorous and impartial analysis of police data—together with public dissemination of the findings—as well as the importance of continual analyses that can help promote and measure change over time.

Collaboration between Two Nationwide Efforts to Increase Policing Equity

Since 2012, the Center for Policing Equity has been working with law enforcement leaders, academics, community advocates, and the Department of Justice to create the National Justice Database (NJD), a National Science Foundation–supported effort to compile national-level statistics about police behavior and develop a rigorous analytic road map for examining police data. NJD's goal is to independently help police and communities learn about disparities in law enforcement and hold departments accountable to them. To date, NJD has received commitments from police departments nationwide, serving 25 percent of the United States population; the data, however, have yet to be made public.

Against this backdrop, President Obama's Task Force on 21st Century Policing launched in May 2015 the Police Data Initiative (PDI), calling on law enforcement agencies across the country to make data publicly available and partner with researchers and technologists to disseminate it. The Police Foundation makes PDI data available through a portal on its website (https://publicsafetydataportal.org/). Through such transparency, PDI aims to rebuild trust between communities and police and, ultimately, to reduce crime. Thus far, over 100 law enforcement agencies have committed to release data files on police actions such as stops, searches, arrests, and uses of force. While dozens of agencies and members of the public have accessed these data, few people have analyzed the data.

Through a collaboration between these two nationwide efforts, this brief demonstrates how the NJD analytic framework can be applied to PDI data to identify the presence (or absence) of unwarranted racial disparities in officer stops, searches, uses of force, and so forth. This brief also shows how the availability of additional police data, advocated by NJD, can increase public knowledge about how to improve policing equity nationwide.

The NJD Analytic Framework

The Austin-specific findings embodied in this brief are an example of the types of questions the NJD analytic framework is designed to answer. The framework aims to distinguish among possible explanations for racial disparities in policing, of which there are three broad classes:

1. **Disparities that arise from community characteristics.** For instance, high crime rates or poverty within a community may draw increased police attention. Individuals within the community may place disproportionately more calls for service to police.
2. **Disparities that arise from police characteristics.** For instance, police may patrol some neighborhoods with less commitment to the dignity of those who live there. Or, deploying more officers to high-crime neighborhoods may produce disproportionately more interactions between police and nonwhite communities.
3. **Disparities that arise from the relationships between communities and police.** For instance, mistrust of law enforcement may incite some communities to flee approaching officers or resist arrest more than other communities do. Similarly, a sense that communities do not trust or respect police may cause officers to feel unsafe or defensive in some neighborhoods.

While the truth likely incorporates elements of each of these explanations, the NJD framework allows departments to learn about how all three contribute to racial disparities. By combining police administrative data with population data (e.g., income, education, racial demographics), police department climate surveys, and community surveys, we can credibly examine the role that each explanation plays in the disparities that both police departments and communities want to reduce.

However, because NJD data on police behavior are neither publicly accessible nor integrated into the PDI rubric, this brief carefully analyzes the role that community-level factors play in racial disparities—that is, explanation 1. The resulting analyses can be used to steer community engagement, relationship building, and continued department reform. Importantly, the persuasive power of analytics grows substantially the longer a department measures and analyzes important indicators. As a result, we encourage the APD, the people of Austin, and all PDI-participating communities to see these analyses as a *first benchmark* against which progress can be measured. With many departments set to receive similar briefs in the coming years, we hope this analytic framework can be a road map for police and communities—establishing where they are now and charting a path toward a more just future.

In fairness, no police department in the country currently collects all the data recommended in the NJD analytic framework (though several departments collect each element of non-survey data). CPE and Urban chose the APD as our partners for this brief because its use-of-force dataset is among the most comprehensive in the country and is the single most comprehensive *publicly available* use-of-force dataset. In addition to its use-of-force dataset, the APD publishes a dataset on citations and arrests resulting from vehicle stops.

The APD does not publish any officer-level data because of officer privacy considerations; police departments rarely make these data public. As a result, we are unable to analyze how much racial disparities are attributable to individual officers (compared to the department or the region). The APD also does not publish data on complaints against officers, so we are unable to examine racial disparities

in complaints using PDI data (Austin's Office of the Police Monitor publishes an annual report on citizen complaints, but these data are not in the PDI portal and thus not subject to analysis here). Additionally, though the APD does make its disciplinary matrix and general orders available to the public, these are not in the PDI portal, so we do not explore questions about policy comprehensiveness in our analyses.

The APD documents, but does not publish data on, pedestrian stops or vehicle stops not resulting in citation or arrest. As a result, we are unable to ask questions about racial disparities in pedestrian stops, and our ability to ask questions about the source of disparities in vehicle stops is limited. We encourage the APD to begin data collection of these fields while noting that new data collections are time consuming, may lower morale in the short term, and require technical infrastructure to aggregate and analyze.

The above description of APD's data holding and publicly available data is offered to demonstrate the tremendous opportunity for greater clarity on fairness in policing that could be afforded by further democratization of policing data. These opportunities are not for the APD alone but for law enforcement agencies nationwide.

The dashboard on the next page illustrates the types of data that could—and arguably should—be collected and disseminated through the PDI portal, whether Austin currently has these data publicly available, and how analyses of these data can answer critical questions that can help move the needle in reducing racial and ethnicity-based bias in policing and enhancing trust between community members and the police. The dashboard is designed to articulate the questions that can be asked of police departments using their data as well as community survey data (while the City of Austin conducts an annual police satisfaction survey of residents, it is not representative of communities most likely to experience violent crime and heavy police presence). The dashboard underscores that because certain data are not currently published through the PDI portal several questions in the NJD analytic framework cannot be posed and answered.

Austin Police Department Data

The Austin Police Department embodies 1,900 officers serving the 11th-largest city in the United States, with 930,000 residents as of 2015. The population of the Austin greater metropolitan statistical area (MSA) is more than double that of the city: 2 million residents, many of whom commute into Austin daily.



Austin, Texas

In this brief, we focus on two types of Austin police data made available through the PDI portal: vehicle stops that resulted in citation or arrest in 2015, and incidents involving police use of force in 2014. We show total counts of vehicle stops and use-of-force incidents and counts by white, black, and Hispanic race and ethnicity. Over half of Austin MSA's residents are non-Hispanic white (53 percent), nearly a third are Hispanic (32 percent), and less than one-tenth are non-Hispanic black (7 percent). Because urban centers such as Austin experience an

Availability of Austin PD Data to Answer NJD Analytic Questions

	Are there racial disparities?	How much are disparities attributable to officers?	How well do officer-level psychologies predict disparities?	What accounts for disparities?	How healthy are officers?	How comprehensive are departmental policies?
Administrative datasets						
Vehicle stops	**Moderate data**	Not in PDI	Not in PDI			
Pedestrian stops	Not in PDI	Not in PDI	Not in PDI			
Use-of-force	**Rich data**	Not in PDI	Not in PDI			
Complaints	Not in PDI	Not in PDI	Not in PDI			
Crime/calls				**Rich data**		
Officer discretion				**Moderate data**		
Neighborhood				**Rich data**		
Police climate surveys						
Psychological health					Not in PDI	
Physical health					Not in PDI	
Job health					Not in PDI	
Policy analyses						
Racial equity						Not in PDI
Trust						Not in PDI
Reduce force						Not in PDI
Thorough						Not in PDI
Effective						Not in PDI

influx of regional residents who visit the city for work and recreation, MSA population figures are more appropriate measures to adjust police data counts for exposure to different citizens. Racial and ethnic differences in police data must also be contextualized with other contributing factors, including level of illegal activity, something we model in the use-of-force analysis by using census tract level Part I crimes as a proxy.

Vehicle Stops and Searches

Over time, the volume of vehicle stops in Austin resulting in a citation remained fairly constant, at approximately 10,000 stops a month, with one sharp drop during September 2015. The number of

FIGURE 1

Vehicle Stops Resulting in a Citation, 2015

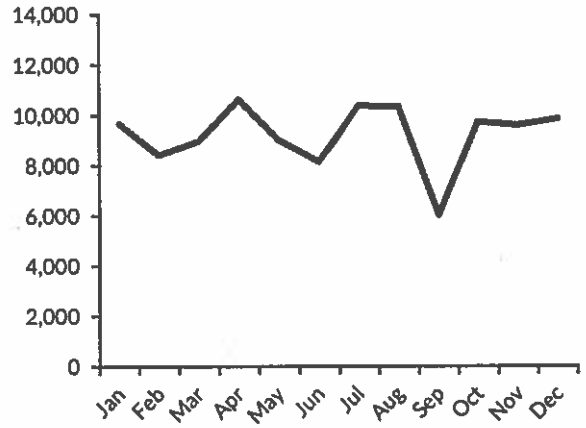
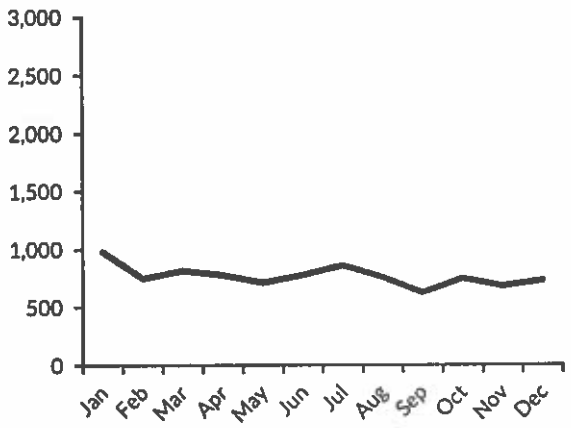


FIGURE 2

Vehicle Stops Resulting in an Arrest, 2015



vehicle stops resulting in an arrest was much lower, averaging 750 a month and remaining fairly constant across time after peaking in January 2015.

VEHICLE STOPS BY RACE OR ETHNICITY

In total, Austin police stopped more white and Hispanic than black drivers in each month of 2015, an expected pattern given the higher share of white and Hispanic residents in the Austin metropolitan area. However, among stops resulting in a citation, more white than Hispanic drivers were stopped each month, while the opposite was true for stops resulting in an arrest. Each month of 2015, a higher number of stopped Hispanic drivers were arrested than either white or black stopped drivers. These counts are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 3

Vehicle Stops Resulting in a Citation by Race or Ethnicity, 2015

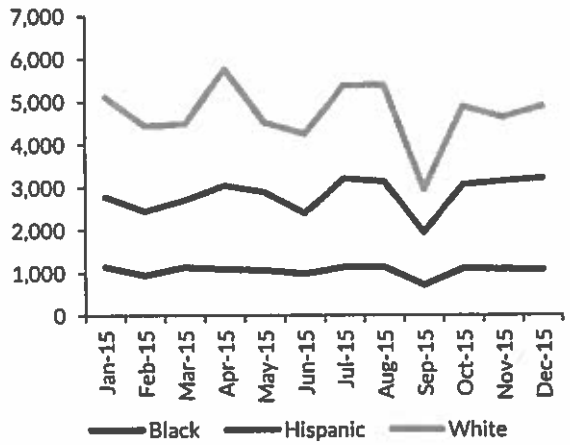
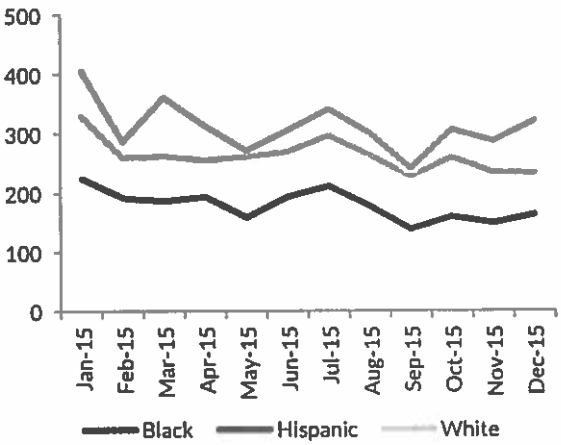


FIGURE 4

Vehicle Stops Resulting in an Arrest by Race or Ethnicity, 2015



When accounting for underlying population, however, we see that rates of vehicle stops resulting in citation or arrest were highest for black drivers throughout the year. In other words, while the fewest number of vehicle stops occurred for black drivers, a higher proportion of black people was stopped than Hispanic or white people. Similar proportions of white and Hispanic drivers experienced vehicle stops resulting in citations, but stop rates resulting in arrests were twice as high among Hispanic drivers as white drivers. Again, these rates are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 5

Per Capita Stops Resulting in a Citation by Race or Ethnicity, 2015

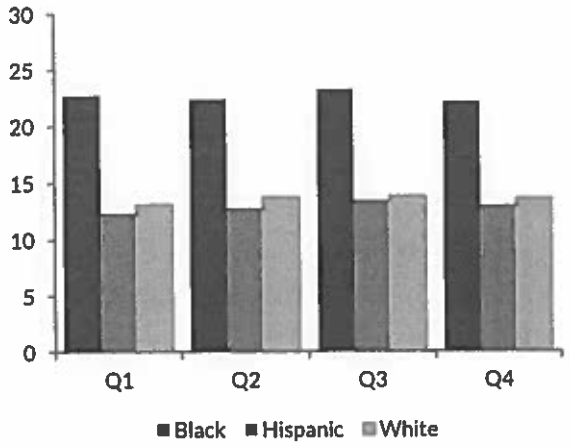
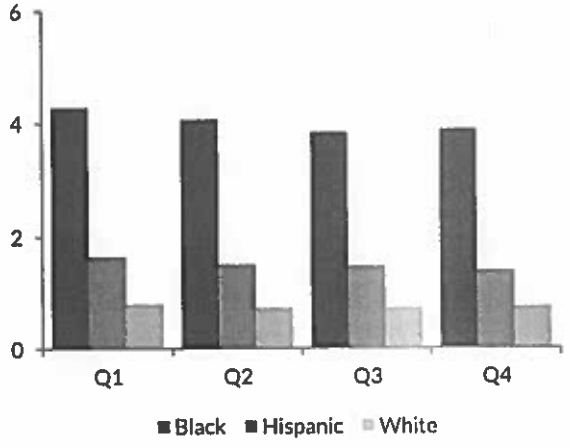


FIGURE 6

Per Capita Stops Resulting in an Arrest by Race or Ethnicity, 2015



VEHICLE SEARCHES BY RACE OR ETHNICITY

Vehicle stops may result in a search following arrest and may precede arrest if reasonably necessary for officer protection (e.g., weapons search), there is probable cause of evidence of crime, or upon the driver's consent. Because only 2 percent of APD's vehicle stops that resulted in a citation involved searches, this section focuses on vehicle stops resulting in arrest.

Three-quarters (76 percent) of APD's arrest stops involved a vehicle search; of those searches, 77 percent were described as occurring for reasons "incidental to arrest." Following *Arizona v. Gant*, 556 U.S. 332 (2009), searches performed incidental to arrest are conducted after an arrest has been made to address continuing safety threats or preserve criminal evidence. Searches performed for other reasons not incidental to arrest, including for "probable cause," as a "frisk for safety," or by driver's "consent," are assumed to have been conducted before arrest and were subjected to greater officer discretion. We focus analysis on these latter searches, which made up 23 percent of those conducted in 2015.

Focusing on searches *not* incidental to arrest, figure 7 shows the percentage of vehicle stops resulting in a search, broken down by drivers' race/ethnicity. In general, search rates were highest for stopped black drivers and lowest for stopped Hispanic and white drivers. The search rate for black drivers peaked early in 2015 at 32 percent, meaning 1 in 3 stops of black drivers involved a search, and was lowest at the end of 2015, when one in six stops (16 percent) of black drivers resulted in a search.

Search rates for Hispanic and white drivers were generally similar, averaging 16 percent and 14 percent respectively, across the time period. By the end of 2015, the racial gap in percentage of drivers searched by race/ethnicity had closed somewhat.

The APD also records whether contraband (drugs, weapons, cash, alcohol, and "other items") was recovered from vehicle searches. One in three (32 percent) vehicle searches yielded contraband, compared with almost half (48 percent) of nonincidental vehicle searches. **Figure 8** shows the search "hit" rates, or percentage of nonincidental searches resulting in contraband discovery, by race/ethnicity. Although hit rates vary, few discernible patterns of differences by race/ethnicity are evident; hit rates average 47 percent for Hispanic drivers, 49 percent for black drivers, and 50 percent for white drivers.

This lack of hit rate differences can typically be interpreted as evidence of lack of bias in decisions to stop or search,[2] but in this case, because the data include only cases in which arrests were made, we do not know the rates at which different groups were searched and contraband was *not* found. Consequently, we cannot draw any conclusions about bias from hit rates among arrest stops. Regardless, APD's hit rates are very high and may be explained, at least in part, by the fact that APD has one of the strictest consent search requirements in the country, for which officers must have probable cause to conduct a search. These hit rates also appear high because they are limited to stops resulting in arrest; other jurisdictions looking at *all vehicle stops* have found hit rates ranging from 7 percent to 34 percent.[3]

FIGURE 7

Share of Drivers Subject to Nonincidental Searches by Race or Ethnicity, 2015

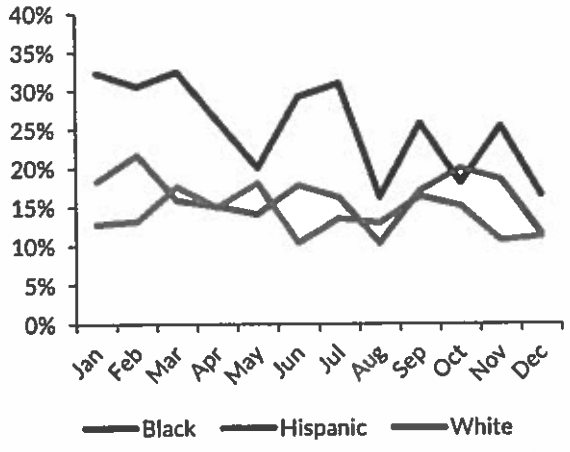
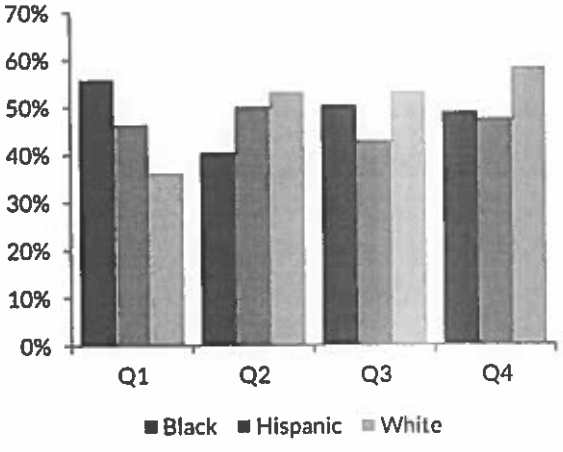


FIGURE 8

Nonincidental Search "Hit" Rates by Race or Ethnicity, 2015



MODELING OFFICER DISCRETION IN VEHICLE STOPS AND SEARCHES

In this section, we present analyses that help us explore whether racial disparities in vehicle stops that lead to citations and arrests are potentially warranted or unwarranted. First, we examine the role of officer discretion in deciding whether to make a stop; second, we model the decision to search a vehicle once a stop is made.

Officer Discretion. To understand whether racial disparities in officer-initiated (discretionary) stops exceed racial disparities in nondiscretionary stops, such as those initiated by citizens through calls for service and commission of felony or misdemeanor, we compute the officer discretionary index (ODI) as follows:

$$ODI = \frac{Officer\ Initiated\ Stops\ of\ B/H/W}{All\ Officer\ Initiated\ Stops} - \frac{Citizen\ Initiated\ Stops\ of\ B/H/W}{All\ Citizen\ Initiated\ Stops}$$

The ODI compares the proportion of officer discretionary stops of blacks (*B*), Hispanics (*H*), and whites (*W*) with the proportion of citizen-initiated stops of the same racial/ethnic group. If a racial group's proportion among officer discretionary stops differs from that among nondiscretionary stops, there may be indication of racial bias. **A positive (or negative) ODI indicates that officers are initiating a higher (or lower) share of stops of that racial or ethnic group than are citizens.** A null result (0) indicates that officer discretion judgment is on pace with that of citizens.

For the Austin police data, we examined the reason recorded for making a stop to distinguish between officer-initiated (discretionary) and citizen-initiated (nondiscretionary) stops. Discretionary stops were defined as those of a "suspicious person," while nondiscretionary stops were defined as those stemming from calls for service or violations of Texas penal code, Austin city ordinance, or the Texas water safety act.[4]

Table 1 shows the ODIs calculated for blacks, Hispanics, and whites in Austin, based on vehicle stops resulting in citation or arrest for 2015. As shown, there is no evidence of racial bias in stops of Hispanic drivers. By contrast, among stops resulting in citation or arrest, a higher share of officer-initiated stops of black drivers was present than citizen-initiated stops of black drivers (the difference is higher among stops resulting in arrest). An equivalently *lower* share of officer-initiated stops of white drivers was present than citizen-initiated stops of white drivers.

TABLE 1

Officer Discretionary Indices, 2015

	Stops Resulting in Citations			Stops Resulting in Arrests		
	% discretionary	% non-discretionary	ODI	% discretionary	% non-discretionary	ODI
Blacks	21	13	0.09	31	19	0.12
Hispanics	41	41	0.01	38	38	0.00
Whites	38	47	-0.09	31	43	-0.12

Note: Discretionary stops are initiated by police officers; nondiscretionary stops are initiated by citizens.

Decision to Search. To understand officers' decision to search a vehicle following a stop, we examined four possibly predictive factors available in the Austin police data, simultaneously in a logistic regression model: driver's race or ethnicity (black, Hispanic, white), driver's gender (male, female), driver's age, and whether the officer indicated he or she knew the driver's race or ethnicity before making the stop.[5] We also tested the possibility that these factors interacted to predict a decision to search.

For this model, we again focused on vehicle stops resulting in arrest and on searches that were not described as incidental to that arrest. Overall, 23 percent of the arrest stops resulted in a search for which the recorded reason was either "probable cause" (18 percent), "frisk for safety" (4 percent), "contraband in plain view" (0.5 percent), or driver's "consent" (0.3 percent).

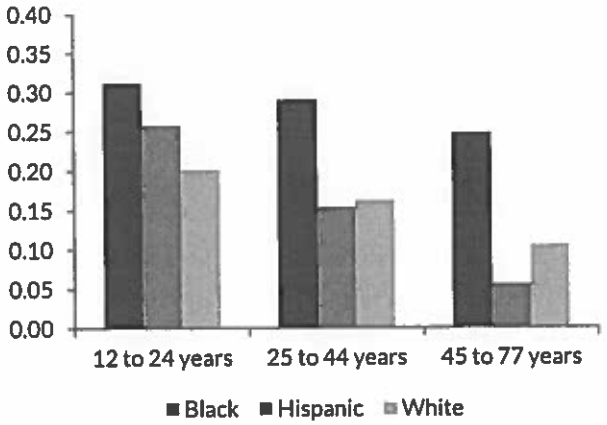
In the regression model, drivers' race/ethnicity and age interacted to predict Austin police officers' decisions to conduct searches on stopped vehicles. This finding remained true after adjusting for driver's gender, whether driver's race was known before the stop, and an interaction between driver's gender and age. **Figure 9** graphs the model-estimated probabilities that a vehicle would be searched by drivers' race/ethnicity and age. Three findings are noteworthy:

- Stopped black drivers of all ages had the highest probabilities of vehicle search.
- Stopped, young Hispanic drivers had the second-highest probability (0.26) of vehicle search, at a rate comparable to that of older black drivers (0.25).
- Age-related reductions in the probabilities of vehicle search were greater for stopped white and Hispanic drivers than for black drivers.

We also noted (but did not graph) that the estimated probabilities of vehicle search were higher when the driver's race was known before a stop (0.30 compared with 0.19) and for younger male (0.28) than older female drivers (0.15). These findings were included as controls in the model.

FIGURE 9

Probability of Vehicle Search by Age and Race or Ethnicity, 2015



Source: Logistic regression model predicting vehicle search, among 7,870 APD vehicle stops ending in arrest in 2015.
Note: Model included drivers' race, age, gender, whether race was known before the stop, and interactions between race and age and between age and gender.

This model provides insight into the relative importance of different factors in predicting Austin officers' decision to conduct a vehicle search on stops ending in arrest, but is unable to control for drivers' differential involvement in illegal activity or exposure to police.

Use-of-Force Incidents

Next, we examined APD's 2014 data on recorded use of officer force against citizens, made public for the PDI and the most comprehensive, publicly available use-of-force dataset. Use-of-force incidents included a range of physical responses to citizens' failure to comply with officers' verbal commands.

Six general categories of force were distinguishable in the APD data: (1) weaponless use of hands or feet to target pressure points; (2) use of an impact weapon such as a baton; (3) use of a chemical agent such as pepper spray; (4) canine bites; (5) use of a conducted energy device (Taser) or less-lethal impact weapon, such as beanbag/rubber bullets; and (6) lethal firearm use. By far, the largest category of force used was (1), which accounted for over two-thirds of force incidents.

Following the NJD analytic framework, we applied a weighted severity scale to these force incident categories so use of a firearm, for example, was weighted more severely than use of a baton. Accordingly, the severity weighting consisted of a 6-point scale aligned with the six categories of force above (e.g., 1 = hands/body, 2 = impact weapon, 3 = pepper spray, 4 = canine, 5 = Taser/less-lethal weapon, 6 = lethal firearm). Higher scores corresponded with more severe levels of force.

Throughout this section, we analyzed both the *counts* of force incidents as well as the *severity* of force incidents. As shown in **figure 10**, both the counts and severity of APD force incidents remained fairly constant over time from January to December 2014.[6] This finding is similar to that for the counts of APD vehicle stops in 2015.

FIGURE 10

Use-of-Force Incidents, 2014



USE OF FORCE BY RACE OR ETHNICITY

Figure 11 and **figure 12** display the counts and severity of force incident rates by citizen's race or ethnicity (per 1,000 citizens). Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA. However, this descriptive analysis of differential exposure to use of force provides no insight on the

complex factors and characteristics that might give rise to such disparities. To explore those factors, more advanced statistical modeling was necessary, as advocated by the NJD analytic framework.

FIGURE 11

Use-of-Force Rates by Citizen Race or Ethnicity, 2014

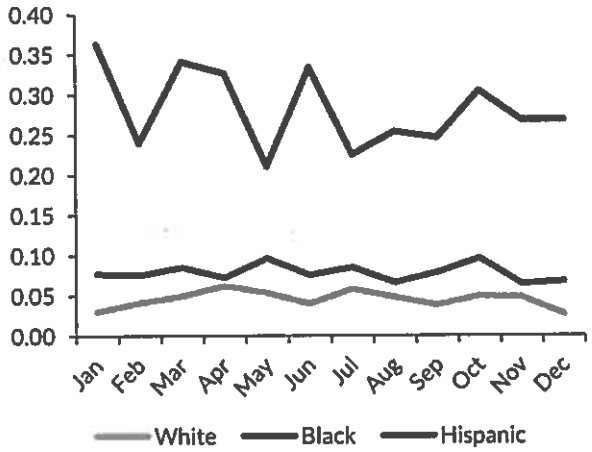
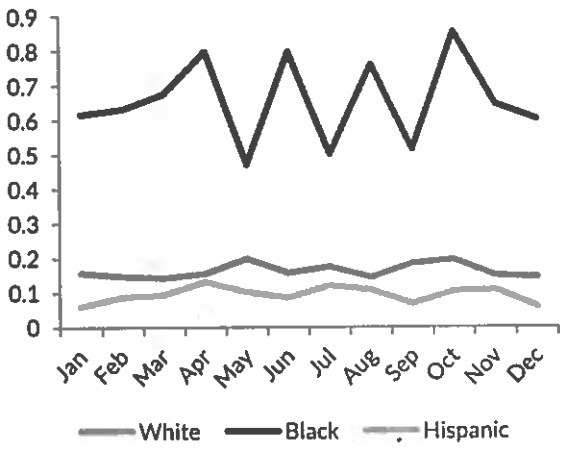


FIGURE 12

Use-of-Force Severity Rates by Citizen Race or Ethnicity, 2014



MODELING USE OF FORCE

To better understand apparent disparities in APD's citywide use of force, we tested the effect of neighborhood-level characteristics on the number of use-of-force incidents that occurred within a census tract, as well as the cumulative severity of force used in those same events.[7]

For these two analyses, we aggregated use-of-force events/severity to the tract level, estimating the independent effects of six neighborhood and demographic characteristics on police use of force: Part I crime rate, median household income, percentage of college-educated residents, homeownership rate, percentage of black residents, and percentage of Hispanic residents.[8] The first four of these characteristics represent theoretically relevant predictors of police use of force, and so they function as control variables in our models. The percentages of black and Hispanic residents help test whether disparities in police use of force persisted after controlling for those community characteristics.

Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin's neighborhoods with a higher percentage of black or Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood were statistically significant positive predictors of police use of force. The percentage of black residents in a neighborhood had a larger effect than percentage of Hispanic residents in both models.

Median household income and crime rate were also impactful and statistically significant predictors of police use of force. The results of the use-of-force incidents model and the use-of-force severity model were largely the same. The statistically significant predictors—median household income, Part I crime rate, percentage of black residents, and percentage of Hispanic residents—were identical

between models. As one would expect, estimated effect sizes were larger for the force severity model because of the multiplicative severity-weighting procedure.

According to the model of use-of-force incidents, a one-point rise in the percentage of black residents increased the expected number of use-of-force incidents by 2.6 percent, holding all other variables constant. The percentage of Hispanic residents had a smaller effect: a one-point rise in the percentage of Hispanic residents increased the expected number of use-of-force incidents by 1.1 percent.

Comparing effect sizes across all independent variables was challenging because the variables were measured in vastly different units. Using standard deviation units, we compared the estimated percentage change in use-of-force incidents uniformly. Increasing the percentage of black residents in a tract by a standard deviation—about 8 percent—led to a 24 percent increase in expected use-of-force incidents. By contrast, a standard deviation increase in the percentage of Hispanic residents—almost 22 percent—led to a 27 percent increase in expected use-of-force incidents.

A standard deviation increase in a tract's Part I crime rate—an upswing of 50 crimes per 1,000 residents—increased the expected number of use-of-force incidents by 92 percent. A standard deviation increase in median household income—a rise of $28,000—decreased the expected number of use-of-force incidents by 33 percent.

FIGURE 13

Estimated Percentage Change in Use-of-Force Incidents Resulting from a Percentage-Point Increase by Race and Ethnicity

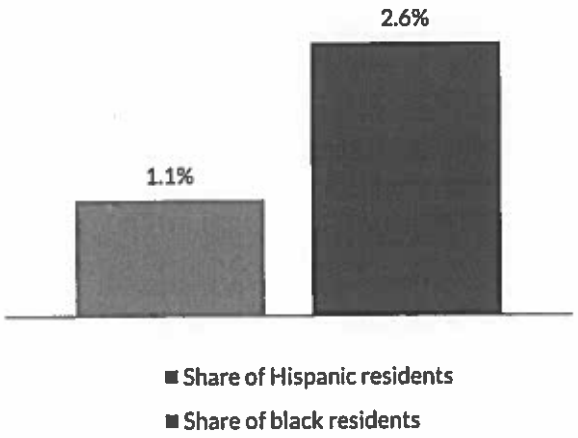
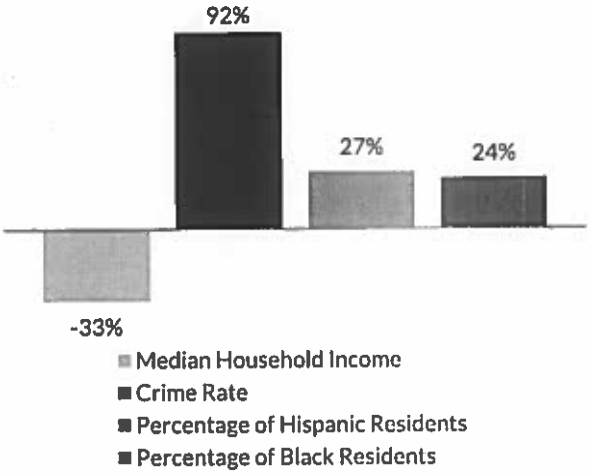


FIGURE 14

Estimated Percentage Change in Use-of-Force Incidents Resulting from a Standard Deviation Increase by Income, Crime, Race, and Ethnicity



Lessons Learned

This report is the first to apply NJD's independent analytic framework to police data made available through the White House's PDI. Although several limitations applied to the findings, as noted throughout, the analyses are encouraging because they represent the start of a more comprehensive and transparent effort to understand—and help correct—the degree of racial and ethnic disparities in policing practices. The information presented is beneficial to both community members and policing executives alike.

As described earlier, the NJD analytic framework identifies three categories of explanation for racial disparities in policing: community level, police level, and relationship level. Given the limited availability of publicly available APD data, and that which is housed on the PDI portal, our analyses are only able to examine community-level explanations. Specifically, this brief analyzes racial disparities in APD police vehicle stops and use of force. The results are mixed.

Analyses of vehicle stop data reveal three important findings.

First, APD searches appear to be highly effective. Searches left to officer discretion (that is, not incidental to arrest) returned contraband roughly 48 percent of the time. While this result may stem in part from APD's unusually stringent policy on consent searches, which require probable cause, it also may be the result of missing data. Given that APD does not publish data on all vehicle stops, an unknown number of vehicle stops and searches did not result in arrest. *To address this omission, APD Chief Acevedo has instructed the department to collect and publish data on both pedestrian and vehicle stops that do not result in citation or arrest by January 2017.*[9] Presumably fewer of those searches end in arrest given the lack of contraband found. Still, the relatively high hit rate should be a goal of law enforcement, and APD's available data suggest reasons for optimism.

Second, there are racial disparities in the decision to stop and search a suspect. Both our models of decisionmaking around searches, the officer discretionary index and the probability of vehicle search model, reveal disparities by race. The ODI revealed that, for vehicle stops ending in citation or arrest, stopped black motorists made up a higher share of officer-discretionary stops than of stops mandated by citizen complaints or by statutes requiring officers to stop a citizen. Similarly, the ODI revealed that stopped white motorists made up a lower share of officer-discretionary stops. Finally, a model of the decision to search revealed that blacks and Hispanics, once stopped, were more likely to be searched than would be indicated by their representation among those stopped. These findings, however, are qualified by our final finding.

Third, an analysis of racial disparities in hit rates revealed no reliable differences between blacks, whites, and Hispanics. Previous research demonstrates that this is not proof of the absence of bias.[10]

The takeaway from these findings is that community-level explanations appear to account for a sizable amount in observed racial disparities. We encourage the APD to continue monitoring these issues and to collect data on all its vehicle stops to assess the equity of officer behavior even more accurately.

By contrast, analyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained.** In other words, community-level explanations of use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks.

Still, these discrepancies are not direct evidence of racial prejudice. Rather, they suggest that police-level and/or relationship-level explanations of use-of-force incidents are also implicated. In other words, we advise APD to focus on police-level and relationship-level concerns to reduce racially disparate use of force.

Common police-directed interventions to minimize racially disparate policing include trainings, particularly ones on how to identify and disarm unintended forms of bias (e.g., identity traps and/or implicit bias), policy reviews conducted by external auditors, and collaborative policy reviews with communities. Relationship-directed interventions highlight principles of procedural justice, particularly issues of community voice and police transparency.

Importantly, the APD has recently attempted to promote transparency by instituting a policy governing the use of body-worn cameras. That someone may be terminated immediately if his or her camera is not activated during a deadly force incident (without appropriate justification) is a strong accountability metric. Similarly, new additions to APD's disciplinary matrix on failure to report complaints (with termination recommended after a second infraction) are strong signals of accountability. APD has also stated that effective January 2017 it will include a form on the back of citations that affords citizens an avenue for both complaints and positive feedback following interactions with officers. Finally, APD's leadership on issues of data transparency also signals a willingness to receive criticism and reform in line with the shared values of police and communities—of particular importance given recent concerns about nonreporting in Texas.[11]

We recommend that APD continue each of these initiatives as well as engage the broader communities of Austin in collaborative efforts to reform and implement policies that reflect their shared values. We also encourage police and community collaboration to design metrics of accountability that are easily understood by the community and leveraged for change both inside the APD and in the Austin metropolitan area.

The science of policing equity demonstrates clearly that collaboration between communities and police is necessary to rebuild trust and reduce the negative consequences that can result from racial disparities in police contacts.[12] We encourage further pursuit of those collaborations and the use of these analyses as benchmarks for both racial equity and progress toward that goal.

Notes

1. See Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006).
2. See Nicola Persico and Petra Todd, "Generalising the Hit Rates Test for Racial Bias in Law Enforcement, with an Application to Vehicle Searches in Wichita," *Economic Journal* 116, no. 515 (2006): F351–67.
3. Persico and Todd, "Generalising the Hit Rates Test."
4. Austin has a three-square-mile lake within the city limits.
5. Although officers' recording of whether a driver's race was known before a vehicle stop was missing for 13 percent of cases, including the variable did not alter the substantive effects of other factors in the model, and it was a significant predictor of vehicle search, so it was retained. Regarding the trustworthiness of the variable's values, we note that officers' were half as likely to indicate race was known (7 percent versus 15 percent) during nighttime (9:00 p.m.–2:00 a.m.) vehicle stops as during other hours of the day, and APD policies specified strict guidelines and consequences for failure to record accurate information for this variable.
6. Use-of-force incidents are coded at the citizen level, meaning that an event consisting of two officers using force against one citizen, for example, is counted as a single use-of-force incident. Conversely, an event that consists of one officer using force on two citizens would be counted as two use-of-force incidents.
7. Use-of-force incidents were weighted using the same schema as used previously.
8. Those characteristics are taken from the 2010–14 American Community Survey five-year estimates.
9. Chase Hoffberger, "APD to Collect More Data," *Austin Chronicle*, April 8, 2016, http://www.austinchronicle.com/news/2016-04-08/apd-to-collect-more-data/.
10. Kate Antonovics and Brian G. Knight, "A New Look at Racial Profiling: Evidence from the Boston Police Department," *Review of Economics and Statistics* 91, no. 1 (2009): 163–77.
11. Lise Olsen, "In Texas and California, Policy Fail to Report Use-of-Force Fatalities from 2005–2015," *Houston Chronicle*, October 9, 2016, http://www.houstonchronicle.com/news/houston-texas/houston/article/In-Texas-and-California-police-fail-to-report-9958631.php.
12. Tyler, *Why People Obey the Law*.

Errata

This brief was updated in May 2017 to clarify the titles of figures 13 and 14 on page 13, make language on pages 5 and 14 more consistent, and correct a typographical error on page 15.

About the Authors

Phillip Atiba Goff is the cofounder and president of the Center for Policing Equity and the Franklin A. Thomas Professor in Policing Equity at the John Jay College of Criminal Justice. Dr. Goff is an expert in contemporary forms of racial bias and discrimination, as well as the intersections of race and gender.

Dean Obermark is a research associate in the Urban Institute's Justice Policy Center and, previously, an operations analyst in the St. Louis Metropolitan Police Department. He has expertise in conducting research analyses of police data and operations, including using GIS for data visualization and spatial analysis.

Nancy La Vigne is director of the Justice Policy Center at the Urban Institute. She manages a staff of over 50 scholars and conducts her own research on policing, criminal justice technologies, and reentry from incarceration.

Jennifer Yahner is a senior research associate in the Urban Institute's Justice Policy Center with over 15 years of experience conducting criminal justice research on the needs and experiences of vulnerable populations, including justice-involved individuals and victims of crime.

Amanda Geller is a clinical associate professor of sociology and director of applied quantitative research at New York University. Dr. Geller's research examines the interactions between criminal justice policy and socioeconomic disadvantage and their joint effects on urban neighborhoods, families, and individuals.

Acknowledgments

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ABOUT THE CENTER FOR POLICING EQUITY

Created in 2008 by a collaborative effort of Dr. Phillip Atiba Goff and then-Denver Police Department Commander Dr. Tracie L. Keesee, the Center for Policing Equity is a research and action think tank that works collaboratively with law enforcement, communities, and political stakeholders to identify ways to strengthen relationships with the communities they serve. Using evidence-based approaches to social justice, we use data to create levers for social, cultural, and policy change.

The Center for Policing Equity is also the home of the National Justice Database, a National Science Foundation effort to standardize national-level data on police behavior. Principal investigators on the National Justice Database are Phillip Atiba Goff, Jack Glaser, Amanda Geller, and Steven Raphael.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR. AND	§	
ELIZABETH HERRERA	§	
Plaintiffs,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 1:22-cv-655-RP**
CITY OF AUSTIN,	§	
Defendant.	§	
	§	

DEFENDANT CITY OF AUSTIN'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiffs' Original Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' Original Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment. [1]

1. Defendant denies the allegations contained in Paragraph 1.

2. Defendant denies the allegations contained in Paragraph 2.

3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of the Original Complaint and therefore denies same.

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

4. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 of the Original Complaint and therefore denies same.

5. Defendant admits the allegations contained in Paragraph 5.

6. Defendant admits the allegations contained in Paragraph 6.

7. Defendant admits the allegations contained in Paragraph 7.

8. Defendant admits the allegations contained in Paragraph 8.

9. Defendant admits the allegations contained in Paragraph 9.

10. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Original Complaint and therefore denies same.

11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Original Complaint and therefore denies same.

12. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 12 of the Original Complaint and therefore denies same.

13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of the Original Complaint and therefore denies same.

14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the Original Complaint and therefore denies same.

15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the Original Complaint and therefore denies same.

16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of the Original Complaint and therefore denies the same.

17. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 of the Original Complaint and therefore denies the same.

18. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 18 of the Original Complaint and therefore denies the same.

19. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of the Original Complaint and therefore denies same.

20. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of the Original Complaint and therefore denies same.

21. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 21 of the Original Complaint and therefore denies same.

22. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 of the Original Complaint and therefore denies the same.

23. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 of the Original Complaint and therefore denies same.

24. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 24 of the Original Complaint and therefore denies same.

25. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 25 of the Original Complaint and therefore denies same.

26. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 26 of the Original Complaint and therefore denies same.

27. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 27 of the Original Complaint and therefore denies same.

28. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 28 of the Original Complaint and therefore denies same.

29. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 29 of the Original Complaint and therefore denies same.

30. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 30 of the Original Complaint and therefore denies same.

31. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 31 of the Original Complaint and therefore denies same.

32. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 32 of the Original Complaint and therefore denies same.

33. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 33 of the Original Complaint and therefore denies same.

34. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 34 of the Original Complaint and therefore denies same.

35. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 35 of the Original Complaint and therefore denies same.

36. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 36 of the Original Complaint and therefore denies same.

37. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 37 of the Original Complaint and therefore denies same.

38. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 38 of the Original Complaint and therefore denies same.

39. Defendant denies the allegations contained in Paragraph 39.

40. Upon information and belief, Defendant admits the allegations contained in Paragraph 40.

41. Defendant admits that the quoted language in Paragraph 41 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 41 and therefore denies same.

42. Defendant denies the allegations contained in Paragraph 42.

43. Upon information and belief, Defendant admits the allegations contained in Paragraph 43.

44. Defendant admits that the quoted language in Paragraph 44 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 44 and therefore denies same.

45. Defendant denies the allegations contained in Paragraph 45.

46. Upon information and belief, Defendant admits the allegations contained in Paragraph 46.

47. Defendant admits that the quoted language in Paragraph 47 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 47 and therefore denies same.

48. Defendant admits that the quoted language in Paragraph 48 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 48 and therefore denies same.

49. Defendant denies the allegations contained in Paragraph 49.

50. Upon information and belief, Defendant admits the allegations contained in Paragraph 50.

51. Defendant admits that the quoted language in Paragraph 51 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 51 and therefore denies same.

52. Defendant denies the allegations contained in Paragraph 52.

53. Upon information and belief, Defendant admits the allegations contained in Paragraph 53.

54. Defendant admits that the quoted language in Paragraph 54 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 54 and therefore denies same.

55. Defendant denies the allegations contained in Paragraph 55.

56. Defendant denies the allegations contained in Paragraph 56.

57. Defendant denies the allegations contained in Paragraph 57.

58. Upon information and belief, Defendant admits the allegations contained in Paragraph 58.

59. Defendant denies the allegations contained in Paragraph 59.

60. Defendant admits that the quoted language in Paragraph 60 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 60 and therefore denies same.

61. Defendant admits that the quoted language in Paragraph 61 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 61 and therefore denies same.

62. Defendant admits that the quoted language in Paragraph 62 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 62 and therefore denies same.

63. Defendant denies the allegations contained in Paragraph 63.

64. Defendant admits that the quoted language in Paragraph 64 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 64 and therefore denies same.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant admits that the quoted language in Paragraph 66 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 66 and therefore denies same.

67. Defendant denies the allegations contained in Paragraph 67.

68. Defendant admits that the quoted language in Paragraph 68 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 68 and therefore denies same.

69. Defendant denies the allegations contained in Paragraph 69.

70. Defendant denies the allegations contained in Paragraph 70.

71. Defendant denies the allegations contained in Paragraph 71.

72. Upon information and belief, Defendant admits the allegations contained in Paragraph 72.

73. Defendant admits that the quoted language in Paragraph 73 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 73 and therefore denies same.

74. Defendant denies the allegations contained in Paragraph 74.

75. Defendant admits that the quoted language in Paragraph 75 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 75 and therefore denies same.

76. Defendant denies the allegations contained in Paragraph 76.

77. Defendant admits that the quoted language in Paragraph 77 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 77 and therefore denies same.

78. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 78 of the Original Complaint and therefore denies same.

79. Defendant incorporates and adopts its responses to the previous allegations of the Complaint.

80. Upon information and belief, Defendant admits the allegations contained in Paragraph 80.

81. Upon information and belief, Defendant admits the allegations contained in Paragraph 81.

82. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 82 of the Original Complaint and therefore denies same.

83. Upon information and belief, Defendant admits the allegations contained in Paragraph 83.

84. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 84 of the Original Complaint and therefore denies same.

85. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 85 of the Original Complaint and therefore denies same.

86. Defendant denies the allegations contained in Paragraph 86.

87. Defendant denies the allegations contained in Paragraph 87.

88. Defendant denies the allegations contained in Paragraph 88.

89. Defendant denies the allegations contained in Paragraph 89.

90. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 90 of the Original Complaint and therefore denies same.

91. Defendant denies the allegations contained in Paragraph 91.

92. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 92 of the Original Complaint. Defendant denies the remaining allegations contained in Paragraph 92.

93. Defendant denies the allegations contained in Paragraph 93.

94. Defendant denies the allegations contained in Paragraph 94.

95. Paragraph 95 merely contains Plaintiff's request for a jury trial and no response is required from the Defendant.

96. Defendant denies the allegations contained in Paragraph 96.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

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MEGHAN RILEY, CHIEF, LITIGATION
/s/ H. Gray Laird
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ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 2nd day of August, 2022.

Via CM/ECF:

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ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G.,	§	
Plaintiffs,	§	**Case No. 1:22-cv-655-RP**
v.	§	**JURY TRIAL REQUESTED**
CITY OF AUSTIN	§	
Defendant.	§	

PLAINTIFFS' FIRST AMENDED COMPLAINT

To the Honorable Court:

1. This is a lawsuit about Austin police officers Luis Serrato and Gabriel Gutierrez who fatally shot Alex Gonzales, Jr. ("Alex") on January 5, 2021, and about the policies and practices of the City of Austin that caused Alex's tragic and untimely death.

2. Alex's parents, Alex Gonzales, Sr., and Elizabeth Herrera (collectively the "Plaintiffs") bring this lawsuit to vindicate their son's civil rights and to hold the responsible parties accountable. Each Plaintiff asserts claims in his or her individual capacity as a wrongful death beneficiary of Alex Gonzales Jr. under Texas law. Each Plaintiff also asserts claims as "Next Friend" on behalf of minor child Z.A.G., who also is a wrongful death beneficiary of Alex Gonzales, Jr. under Texas law.

I. Parties

3. Plaintiff Alex Gonzales, Sr. is a citizen of Texas and a resident of Bastrop County, Texas. His son, Alex Gonzales, Jr, also was from Bastrop County, Texas. As Alex Gonzales, Jr.'s biological father, Plaintiff Alex Gonzales, Sr. is a wrongful death beneficiary and, as such, brings this wrongful death action in his individual capacity pursuant to Texas Civil Practice and Remedies Code §§71.002(b), 71.004(b) and 42 U.S.C. §§1983, 1988.

4. Plaintiff Elizabeth Herrera (a/k/a Elizabeth Gonzales) is a citizen of Texas and a resident of Bastrop County, Texas. Her son, Alex Gonzales, Jr, also was from Bastrop County, Texas. As Alex Gonzales, Jr.'s biological mother, Plaintiff Elizabeth Herrera is a wrongful death beneficiary and, as such, brings this wrongful death action in her individual capacity pursuant to Texas Civil Practice and Remedies Code §§71.002(b), 71.004(b) and 42 U.S.C. §§1983, 1988.

5. Minor child Z.A.G. ("Z.A.G.") is a person under the age of eighteen (18) who is a citizen of Texas and, on information and belief, is a resident of Travis County, Texas. As the presumed biological child of Alex Gonzales, Jr., Z.A.G. is a wrongful death beneficiary pursuant to Texas Civil Practice and Remedies Code §71.004(b). Each Plaintiff has standing to assert wrongful death claims on behalf of Z.A.G. pursuant to Texas Civil Practice and Remedies Code §71.004(b). Each Plaintiff asserts claims on behalf of Z.A.G. in his or her capacity as "Next Friend" of Z.A.G. pursuant to Texas Civil Practice and Remedies Code §§71.002(b), 71.004(b) and 42 U.S.C. §§1983, 1988. Z.A.G. is a necessary party to this action because, under Texas law, the claims of all potential wrongful death beneficiaries must be joined in a single action.[1]

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[1] *See Ordonez v. Abraham*, 545 S.W.3d 655, 667 (Tex. App. – El Paso 2017) ("Texas undoubtedly requires that only one suit be filed to address the alleged negligent death of a person."); *Avila v. St. Luke's Lutheran Hosp.*, 948 S.W.2d 841, 850 (Tex. App. – San Antonio

6. Defendant City of Austin (herein the "City" or "Austin") is a Texas municipal corporation in the Western District of Texas which funds and operates the Austin Police Department ("APD") and the APD Training Academy.

II. JURISDICTION AND VENUE

7. This Court has federal question subject matter jurisdiction over this 42 U.S.C. §1983 lawsuit under 28 U.S.C. §§ 1331 and 1343.

8. The City is subject to general personal jurisdiction because it is a Texas municipality.

9. This Court has specific personal jurisdiction over the City because this case involves its conduct that occurred in Austin, Texas.

10. Venue for this case and the asserted causes of action is proper in the Western District of Texas, Austin Division pursuant to 28 U.S.C. § 1391(b) because all or a substantial portion of the events or omissions giving rise to each Plaintiff's claims occurred in the Western District of Texas, Austin Division.

III. FACTUAL ALLEGATIONS

A. Officers Gutierrez and Serrato shot and killed Alex Gonzales, Jr. without provocation or justification.

11. In the early morning hours of January 5, 2021, Alex Gonzales, Jr. ("Alex") was driving with his girlfriend, Jessica Arellano ("Arellano"), in the passenger seat and with their two-month-old baby, Zayne Alexander Gonzales, in the backseat. They encountered Gabriel Gutierrez ("Gutierrez"), an off-duty Austin Police Officer, on the road in his personal vehicle.

1997) ("The [wrongful death] act contemplates that only one suit shall be brought, which shall be for the benefit of all parties entitled to recover.").

12. Gutierrez used his car to cut-off Alex's car. Gutierrez's aggressive driving initiated a confrontation with Alex. Gutierrez then turned from E. Oltorf Street and headed southwest on Wickersham Lane, a two-lane residential road. Gutierrez stopped in the right lane of Wickersham, baiting Alex and escalating the events.

13. Alex pulled his vehicle next to Gutierrez's vehicle and stopped to the left of the vehicle. Unprovoked and without any warning, Gutierrez, at close range, rapidly fired multiple shots into the passenger side of Alex's vehicle, where the young mother and her baby sat. Upon information and belief, Gutierrez fired at least six (6) shots into Alex's vehicle. Gutierrez shot Alex in the head and Arellano in the torso. Alex, now severely wounded and in a state of shock and fear, maneuvered the vehicle to get away from the gun fire and crashed on the right-hand curb a short distance ahead.

14. At no point during this series of events did Alex flash a gun or take any other aggressive action that would justify Gutierrez's use of lethal force.

15. Gutierrez was not in a police vehicle. He was not wearing police clothes. Alex had no reason to know or suspect that Gutierrez was an off-duty APD police officer. Alex had not harmed or threatened anyone. There was no objectively reasonable basis for Gutierrez to be afraid for himself or others. No reasonable police officer would have used deadly force against Alex in these circumstances.

16. Gutierrez was the aggressor in his encounter with Alex. Gutierrez's actions created the initial confrontation and escalated the events that ensued.

17. After firing at least six shots into Alex's vehicle, shooting Alex and his passenger, Officer Gutierrez called 911 at approximately 12:33 AM. Gutierrez told the 911 dispatch that: (1)

Alex had cut him off, (2) that he (Gutierrez) had been involved in a "road rage" incident, and (3) Alex had pointed a gun at him. Each of these statements was untrue.

18. The transcript of the first part of the 911 call reads as follows:

911 Operator: Austin 911,

do you need police, fire, or ambulance?

Officer Gutierrez: Hey, off duty – off duty APD AP 8063.

I have shots fired.

2400 Wickersham Lane.

911 Operator: 2400 Wickersham Lane?

Officer Gutierrez: Yes, sir.

911 Operator: Okay, how many did you hear?

Officer Gutierrez: Uh, what's that?

911 Operator: How many was there?

Officer Gutierrez: I have a – a victim – the driver –

The, uh, other vehicle, he has a gun.

I'm not – I'm not shot. I need EMS over here.

911 Operator: I'm bringing them on.

Ambulance, what's the address of your emergency?

2400 Wickersham Lane.

Ambulance, what's the address of your emergency?

911 Operator: EMS, it's an off-duty officer,

he is at 2400 Wickersham Lane.

Officer Gutierrez: Police.

Ambulance: You said 2500 Wickersham?

Officer Gutierrez: Get the (unintelligible) down.

911 Operator: 2400 at the High Point Apartments.

Officer Gutierrez: And it – it – no – no, I'm sorry,

2500 Wickersham Lane – 2500 in the street.

Hey, drop your gun.

Austin Police. He's moving.

He's got a gun in his hand.

911 Operator: Okay, we're gonna – we're gonna stage for officers to…

Officer Gutierrez: No, don't stage.

I'm APD, I – he's got a gun in his hand.

I need officers now.

911 Operator: Yeah, okay.

Officer Gutierrez: I'm an Austin Police Officer.

911 Operator: APD is on the way.

Um, EMS is going to stage.

Officer Gutierrez: Yeah – yeah, EMS needs to stage.

911 Operator: Okay

Officer Gutierrez: Austin Police.

Put your gun down, man.

Let me see your hands.

Hands up, man. EMS is coming.

Put your hands up. Hey, hands up, man.

He's hanging out the door.

He had a gun in his hand.

There's a passenger.

She's lying on the ground – female passenger.

911 Operator: Okay, so tell me exactly what happened.

Officer Gutierrez: Um, it was a road rage incident.

I was driving and he cut me off,

and he pointed a gun at me.

911 Operator: Okay, is anybody injured?

Officer Gutierrez: Yes, the – the driver of the other vehicle.

He's shot. Put your gun down.

Austin Police, put your gun down.

Don't make me shoot you again, man.

It's the police.

I don't know if the – I don't know if the passenger's shot or not.

She's lying on the ground.

Operator: Okay, that – that's all right.

We do have APD Dispatch on the line

Did y'all want Fire [resources][sic] as well?

Officer Gutierrez: All right, my – my –

Yes, sir, my AP's 8063.

8063.

Hey, just keep your hands up, man.

Lie on the ground and keep your hands up.

Woman: (Unintelligible).

Officer Gutierrez: *Okay, the – the female passenger,*

she's lying on the ground.

She's saying, "My baby – my baby – my baby."

The driver, he's standing.

He's got blood all over his face.

He's standing.

I don't know if he's still got the gun in his hand or not.

911 Operator*: Okay, is there a baby involved, or*

Is she pregnant, do we not know?

Officer Gutierrez: *I have no idea, I don't know –*

I have no idea.

911 Operator: Okay.

Officer Gutierrez: *She's just saying, "My baby."*

I'm – I'm not approaching the vehicle.

I'm standing by – behind my vehicle.

911 Operator: I – I totally understand. Um…

Officer Gutierrez: All right, there's units coming

Right now – there's units coming right now.

911 Operator: Do you know – do you know if he's awake and breathing?

Officer Gutierrez: Uh, yeah, he's standing up right now.

911 Operator: Okay.

Officer Gutierrez: All right, put your gun down, man.

It's the police.

Our units are here, can I – can I disconnect?

911 Operator: Um, yeah, I will let you go.

Officer Gutierrez: Don't reach in your pocket –

don't reach in your pocket.

Do not reach in your pocket.

19. After Alex's vehicle landed partially on the curb, Gutierrez parked his vehicle behind Alex's vehicle. Gutierrez got out of his car and continued his conversation with 911 dispatch.

20. Arellano, who had been shot in the torso, crawled out of the vehicle onto the ground. She repeatedly cried: "My baby! My baby!"

21. Alex got out of his car, stayed by the driver's door, and tried to put his hands up. However, Alex's gunshot wound compromised his physical and mental functions, and his comprehension.

22. Gutierrez knew there was an infant in the passenger side of the car. He knew the mother was crying out for the baby, and that she was concerned the baby was injured. Gutierrez knew two people were badly injured, with a baby who also might be injured.

23. Defendant Gutierrez did not render aid. As time passed, Gutierrez simply stood by.

24. In an instant, Alex went from driving along a city street with his girlfriend and baby to having the macabre experience of a stranger shooting repeatedly with an automatic handgun into his car. Alex knew only that he had been shot in the head and his girlfriend had been shot and was bleeding on the ground. At this time, Alex did not know whether his son had been shot or injured.

25. Bystanders watched in horror from a nearby balcony, recording the events and calling 911. One bystander said: "Dude, that was like six shots right there."

26. Additional officers arrived, including Officer Serrato ("Serrato"), and approached the scene. Serrato and another uniformed Austin Police Officer held Alex at gun point. None of the responding officers render aid to Alex or Arellano, both of whom were obviously severely injured. Instead, the officers began shouting multiple, conflicting commands at Alex and Arellano.

27. Because Alex had been shot inside a vehicle at close range his hearing was impaired, making it difficult for him to hear the commands of the officers. Alex also was in shock, unable to comprehend or process what was happening and why officers were yelling at him when he was the victim of a shooting. Alex tried to speak to the officers, but his words were indecipherable given his impaired condition after being shot by Gutierrez.

28. The officers yelled at Alex to put his hands up. Alex kept his hands up, resting against the open car door. There was no weapon in Alex's hands. Alex had difficulty standing.

29. When no one came to his aid, Alex began stumbling toward the passenger side of the car, toward his girlfriend and child. Due to the gunshot wounds to the head, he had difficulty walking and had to use the car to hold himself up. Disoriented, Alex touched his head wound and then looked at the blood on his hands, as if trying to comprehend what had happened. Alex followed the rear of the car towards the passenger side, wounded and needing to steady himself with his hands on the vehicle. Still, no one came to his aid.

30. At all times, Alex's hands were in plain sight of officers. The officers could plainly see he had no weapon. The officers could see that Alex was attempting to check on the welfare of his baby son.

31. Alex reached the passenger side of the vehicle. Arellano continued to beg him to help their child.

32. Alex slowly turned to reach the rear passenger door. He made no sudden movements. He did not look at the officers or threaten them in any way. He did not confront the officers.

33. Alex opened the rear passenger door and, with his back to the officers, bent down toward his son who was in the car seat, visible from the back of the vehicle.

34. The officers knew two people had been shot and were seriously injured. The officers knew the mother was repeatedly begging for someone to help her baby. The officers knew there was a baby in the car. The officers could plainly see that Alex was attempting to check on the welfare of his child.

35. Without any justification, Serrato opened fire. Serrato fired at least ten shots, killing Alex. As a result of the shots fired by Officer Serrato, Alex fell dead and slumped in a heap. Alex was unarmed, mere inches away from his infant son.

36. At no point did Officer Serrato see a weapon in Alex's possession.

37. At no point did Alex make any aggressive move towards Serrato or any of the other officers on the scene.

38. At no point did Alex take any action that would have provided any indication that he posed a danger to any officer or any bystander at the scene.

39. No objectively reasonable basis existed to believe that Alex had harmed or posed a threat to harm anyone. No reasonable police officer would have used deadly force against Alex, or any other citizen, in these circumstances.

B. Through its policies, practices, and customs, Austin trained its police officers to adopt a paramilitary culture that caused them to adopt a "warrior mindset" and an "us versus them" approach to policing that permitted, encouraged, and tolerated excessive force.

40. For many years prior to the fatal shooting of Alex Gonzales, Jr., the City of Austin trained its police officers in ways that expressly and implicitly encouraged and approved of the use of excessive force in policing encounters with Austin residents. The Austin Police Department Training Academy used a training curriculum centered upon "paramilitary" training techniques that taught and reinforced a "paramilitary culture" throughout the APD. The APD Training Academy taught the officers to adopt a "warrior mindset" that encouraged an "us versus them" approach to citizen encounters during policing.

41. On May 22, 2020, Dr. Sara Villanueva delivered to then-Chief Brian Manley a Review Analysis and Strategic Plan of the Austin Police Department Training Academy (the "Villanueva Report"). At that time, Dr. Villanueva was the Organizational Development and Training Manager at the Austin Police Department. A copy of the Villanueva Report is attached to this complaint as Exhibit A, and it is incorporated herein by reference. On information and

belief, Dr. Villanueva prepared and delivered her report within the scope of her authority as an employee and agent of the City of Austin.

42. After conducting a thorough "SWOT analysis" (assessing strengths, weaknesses, opportunities, and threats) of the APD Training Academy, Dr. Villanueva reported the following findings:

a. "[The] APD Training Academy operates under a paramilitary training format . . ." (Exhibit A, page 7 of 18);

b. "There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-police services model. A growing body of research has shown that paramilitary-structured academies do not align well with the principles of community policing and problem solving which are based on collaborations and partnerships." (Exhibit A, page 7 of 18);

c. "The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime." (Exhibit A, page 10 of 18); and

d. "The warrior mindset, and the fear that drives it, must change." (Exhibit A, page 10 of 18).

43. Each of the above-quoted findings from the Villanueva Report was true.

44. On December 29, 2020, Austin Chief Equity Officer Brion Oaks delivered a memorandum (herein the "Oaks Memorandum") to the Austin Mayor and City Council (via Nuria Rivera-Vandermyde) for the purpose of "provid[ing] a brief overview of two bodies of work documenting racial inequities within the Austin Police Department (APD)." (Exhibit B, page 1 of

152) The first body of work was a series of evaluations prepared by a third-party evaluator, The Peace Mill Research and Communications (herein the "Peace Mill Evaluations"). (Exhibit B, pages 4-107 of 152) The second body of work was a report prepared third-party evaluator Joyce James Consulting (herein the "Joyce James Report"). (Exhibit B, pages 108-152 of 152) The Peace Mill Evaluations and the Joyce James Report each were prepared at the direction and authorization of the Austin City Council. The Oaks Memorandum was prepared and delivered within the scope of Brion Oaks authority as an employee of the City of Austin. A copy of the Oaks Memorandum, including copies of the Peace Mill Evaluations and the Joyce James Report, is attached to this complaint as Exhibit B, and they are incorporated herein by reference.

45. The Peace Mill Evaluation of the APD Training and Recruiting Divisions reported the following findings:

a. "Multiple former cadets expressed concerns that training division staff foster a culture of violence, embracing brutality over wisdom throughout the academy experience. . . . Multiple former cadets allege that *the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation*." (Exhibit B, pages 18–19 of 152, emphasis added);

b. "The term *culture of violence* describes institutionally imposed conditions that 'can be used to justify or legitimize direct or structural violence.' . . . [T]he qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied [for the APD Training Academy]." (Exhibit B, page 18 of 152, footnote 8, emphasis in original); and

c. "According to interview respondents, many of the academy's trainers rely overwhelmingly on 'violent', 'brutal', 'traumatizing' practices designed to 'manufacture soldiers' rather than produce community-driven law enforcement professionals adept at de-escalation." (Exhibit B, page 20 of 152).

46. Each of the above-quoted findings from the Peace Mill Evaluation was true.

47. On January 18, 2021, a panel of Austin community members delivered a Community Report that provided a comprehensive assessment of training videos used in the training curriculum of the APD Training Academy. A copy of the report is attached to this complaint as Exhibit C, and it is incorporated herein by reference. The Community Report was prepared with the authorization of the Austin City Council pursuant to Council Resolution No. 20191205-066 dated December 5, 2019 (attached to this Complaint as Exhibit F).

48. The Community Report provides an assessment of videos and training materials that had been in use within the APD Training Academy for many years prior to the shooting of Alex Gonzales, Jr. The Community Report states that "[t]he videos we reviewed were chosen by leadership from the Austin Police Department and the Office of Police Oversight." (Exhibit C, page 3 of 26).

49. The Community Report stated the following findings:

a. "Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed." (Exhibit C, page 6 of 26);

b. "One of the more pervasive biases we observed is the us-versus-them mindset. This bias existed at a fundamental, pervasive level, further informing other

biases with respect to race, ethnicity, gender, and ability, and affected officers of color and female officers in the same or similar ways as White male officers." (Exhibit C, page 14 of 26);

c. "The us-versus-them bias was explicit in some of the videos—i.e. police work is 'the deadly game of cops and robbers'; however, much of it was implicit. This bias was manifested in the following ways:

- An enhanced focus on officer safety over the safety of the community as a whole,
- A 'warrior' versus 'service' mentality in which officers see themselves as the 'good guys' and the public they interact with as 'bad guys,'

. . .

- Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled."

(Exhibit C, pages 14-15 of 26);

d. "Primarily this bias manifested in a focus on police officers 'winning' by overcoming resistance and threat from the community or by prevailing in court or in grievance and complaint hearings. . . . The focus turns from compassion to conquest as officers see community as a roadblock in their effort to control and 'win.' In the end, communities will continue to suffer, as there is no viable way to 'win' – not only against police officers, but also against the system that continues to protect police officers in this us-versus-them framework." (Exhibit C, page 15 of 26);

e. "We also observed evidence of the growing militarization of policing in the videos. . . . Many police organizations actively propagate the idea that our cities are a kind of 'war zone' rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of 'bad actors' which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy." (Exhibit C, page 15 of 26);

f. "Connected to both increasing militarism and the us-versus-them dichotomy, which we believe is at the heart of the repeated instances of police overreactions to threat and use of excessive force, is what researchers have called the 'danger imperative'—a belief in a constant and prevalent danger for police officers. . . Several of the descriptions of the training materials in use at the APD academy state this plainly." (Exhibit C, page 16 of 26);

g. "[O]fficers are trained to view every encounter as potentially life-threatening." (Exhibit C, page 17 of 26);

h. "One of the training officers acknowledged that there has been an overemphasis on an officer 'going home at the end of the shift' for some time in policing and police training. The training we viewed, particularly the training highlighting the danger imperative, definitely emphasized the safety of the officer above all else." (Exhibit C, page 17 of 26); and

i. "From what we observed in videos and with conversations with instructors, we contend that the structure of policing as a whole, particularly the focus on control and the warrior mentality, reinforces the us-versus-them dichotomy in

ways that tend toward escalation and grievous mistakes in judgment." (Exhibit C, page 18 of 26).

50. Each of the above-quoted findings from the Community Report was true.

51. On February 26, 2021, third-party consultant Kroll Associates, Inc. delivered to the City of Austin (via Director of Austin Office of Police Oversight Farah Muscadin and Deputy City Manager Nuria Rivera-Vandermyde) a Memorandum regarding Kroll's Preliminary Assessment of the Austin Police Training Academy (herein the "Kroll Preliminary Assessment"). The Kroll Preliminary Assessment is attached to this complaint as Exhibit D and is incorporated herein by reference. The Kroll Preliminary Assessment was prepared pursuant to the authorization of the Austin City Council.

52. Despite the dramatic findings by Dr. Villanueva and the Community Review panel, persons with the APD training academy have been resistant to changing the police training curriculum. The Kroll Preliminary Assessment states:

a. "The majority of APD and Academy leadership have questioned the assertion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a 'warrior' mindset, which leads to an 'us vs. them' mentality of officers on the front lines fighting crime." (Exhibit D, page 5 of 22); and

b. "When asked if the Academy is proactively revisiting the existing curriculum and lesson plans . . . the answer provided is that Academy instructors and supervisors are awaiting further guidance and input from the new ODTM, whenever that person is hired to replace Dr. Villanueva." (Exhibit D, page 8 of 22).

53. Each of the above-quoted statements from the Kroll Preliminary Assessment was true.

54. On April 23, 2021 third-party consultant Kroll Associates, Inc. delivered to the City of Austin, Office of Police Oversight / City Manager's Office their Final Report on the Austin Police Department: Review and Assessment of Training Academy (herein the "Kroll Final Report"). The Kroll Final Report is attached to this complaint as Exhibit E and is incorporated herein by reference. The Kroll Final Report prepared pursuant to the authorization of the Austin City Council.

55. The Kroll Final Report states:

a. "The Academy at present remains a predominantly paramilitary training model." (Exhibit E, page 6 of 113);

b. "[I]n the greater context of police work, seeing oneself primarily as a 'warrior' is a precarious mindset. . . . [W]hen officers are taught to see citizens as potential threats to their life, they learn to fear them. Thus, interactions between police and the community often start with suspicion, vigilance and caution, and positive encounters become infrequent, if not impossible. Furthermore, since officers are taught to physically control their space and react forcefully to noncompliance, they sometimes escalate otherwise peaceful encounters, making situations more dangerous for both sides." (Exhibit E, page 16 of 113);

c. "Other components of the military model may also be inconsistent with the demands of modern policing. . . . [T]he use of recruiting videos and web content that routinely feature high-action sequences and appeals to strength and

violence over service can send the wrong message about the nature of policing in a progressive urban environment." (Exhibit E, page 16 of 113);

d. "Using a different training approach, police academies can establish a guardian-centric culture that focuses on service to the community rather than fighting crime, while still preparing officers to effectively react and respond to crisis situations. . . . Experts contend that this training style—which emphasizes strengthening officers' critical decision-making skills, communication, and emotional intelligence skills—is better associated with the skills and tactics necessary to handle complex situations that officers are likely to face in the field." (Exhibit E, page 17 of 113); and

e. "APD leadership has expressed its belief to Kroll that some aspects of a paramilitary structure are an essential component of police culture . . . . Indeed, the majority of APD and Academy leadership we spoke with questioned the suggestion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a 'warrior' mindset, which leads to an 'us vs. them' mentality of officers on the front lines fighting crime." (Exhibit E, page 49 of 113).

56. Each of the above-quoted statements from the Kroll Final Report was true.

57. On information and belief, the City of Austin and the APD maintain other policies, practices, and customs that reinforce, encourage, and tolerate the paramilitary training of its police officers, the "warrior mindset," and the "us-versus-them" approach to policing. These policies and procedures include, without limitation, investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and

complaints involving officer use of force. On information and belief, these additional policies, practices, and customs reinforce and exacerbate the pervasive APD culture that permits, encourages, and tolerates the use of excessive force by Austin police officers.

C. Through its policies, practices, and customs, Austin created, encouraged, and tolerated a racist policing culture that particularly directed excessive force toward Hispanic and Black persons.

58. For many years prior to the fatal shooting of Alex Gonzales, Jr., the City of Austin adopted policies, practices, and customs that encouraged and tolerated a disproportionate use of excessive force targeted towards Hispanic and Black persons. The encouragement and toleration of the use of excessive force in a racially discriminatory manner was particularly engrained in the training methods and training materials used at the Austin Police Department Training Academy.

59. On December 5, 2019 the Austin City Counsel adopted Resolution No. 20191205-066 ("Resolution 66"). A copy of Resolution 66 is attached hereto as Exhibit F and is incorporated herein by reference. The Austin City Counsel duly adopted resolution 66 pursuant to its legal authority. Resolution 66 states in relevant part:

a. "[T]he City of Austin acknowledges that the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy." (Exhibit F, page 1 of 12);

b. "[T]he Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates." (Exhibit F, page 1 of 12); and

c. "[P]atterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust . . . and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum." (Exhibit F, page 4 of 12).

60. Each of the above-quoted statements from Resolution 66 was true.

61. Resolution 66 directed the Austin City Manager to "initiate a comprehensive, multi-pronged investigation and evaluation of the extent to which forms of bigotry and discrimination are present in the protocols, practices, and behaviors of the officers of the Austin Police Department." (Exhibit F, page 4 of 12).

62. Resolution 66 further directed the City Manager to "initiate an audit of the Austin Police Department's training materials, course/section descriptions and duration, and description of any other procedures (e.g. detailed descriptions of scenarios) administered to cadet classes and to active officers related to training on communication strategies, cultural competency, acknowledging and addressing bias, use of force, de-escalation, search, proactive policing, mental health response, protocols for non-English speaking persons, protocols for disabled persons, recognizing resistance and the rules and procedures that define resistance and their evaluation protocols, as well as the course/section content and duration of all other coursework required at the cadet academy and their evaluation protocols." (Exhibit F, page 9–10 of 12).

63. On December 28, 2020, the Peace Mill Evaluation of APD Training and Recruiting Divisions (described above) stated the following findings:

a. "Recent reports from sources including the Office of Police Oversight and APD's own internal investigator offer even further evidence that there are

serious gaps in the department's attempts to address racism and inequity in policing." (Exhibit B, page 20 of 152);

b. "The culture of the APD training academy, detailed firsthand by the courageous respondents who were interviewed for this research, conflicts directly with the department's recruiting and public relations campaigns, which proclaim a police department focused on diversity, equity and community engagement. APD's own data reveals repeated failures at achieving these goals." (Exhibit B, page 22 of 152);

c. "Further interviews with APD division leaders from multiple divisions indicate that the department's commitment to the equity assessment process has been similarly superficial." (Exhibit B, page 23 of 152); and

d. "In fact, it is hard to identify any meaningful, measurable commitments to equitable outcomes when assessing the division's responses [to the City's Equity Assessment Tool]. The division's staff is not diverse and there are no specific or measurable standards for ensuring equitable practices in day-to-day operations." (Exhibit B, page 34 of 152).

64. Each of the above-quoted findings from the Peace Mill Evaluation was true.

65. On December 28, 2020, the Peace Mill Evaluation of APD Internal Affairs and Professional Standards Division (described above) stated the following findings:

a. "APD's Internal Affairs and Professional Standards division has few strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a

significant deficiency in the division leadership's ability to implement principles of diversity, equity and inclusion." (Exhibit B, page 52 of 152);

b. "If the Training Division, which fails tremendously to implement principles of equity, does not graduate diverse classes from its academy, Internal Affairs is, by extension, prohibited from accessing a diverse candidate pool. Perhaps more than any other example, this highlights the need for deep and systemic changes at APD." (Exhibit B, page 52 of 152); and

c. "Evidence from the Internal Affairs and Professional Standards division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes." (Exhibit B, page 53 of 152).

66. Each of the above-quoted findings from the Peace Mill Evaluation was true.

67. On January 18, 2021, the Community Report (described above) offered the following findings with respect to its assessment of the videos and other training materials being used by the APD Training Academy:

a. "***[B]y far the most alarming pattern we witnessed*** [in the training videos] ***was the harmful stereotypes perpetuated against Black and Brown communities***. The videos shed light on the disproportionate interactions police have with Black, Indigenous, and Brown communities that result in violence and death." (Exhibit C, page 4 of 26, emphasis in original);

b. "Many of the videos showed People of Color, and in particular, Black people, being brutalized and/or their well-being utterly disregarded." (Exhibit C, page 6 of 26);

c. "There was gross overrepresentation of the use of force and negative outcomes from mostly White male officers interacting with Black and Brown community members. *We witnessed again and again Black men dying within minutes, sometimes within seconds, of an interaction with police*." (Exhibit C, page 6 of 26, emphasis added);

d. "There were exceptionally few videos showing the police trying to de-escalate situations involving People of Color. In many of the videos showing encounters with community members over minor criminal infractions, *a strong emphasis on gaining compliance and control quickly led to rapid escalation with often violent and even deadly results.*" (Exhibit C, page 6-7 of 26, emphasis added);

e. "Many of the videos . . . are so disturbing in gratuitous violence against Black and Brown people that we strongly recommend that they only be used as examples of why community members historically mistrust the police. . . . We fear that repeated exposure to needless violence normalizes such interactions with the public for the cadets and desensitizes them to their own and their communities' humanity." (Exhibit C, page 7 of 26);

f. "There was a clear pattern, both explicit and implicit, of different communities being offered different degrees of understanding and grace by officers. Police interactions with upper-class, White communities were noticeably absent in the videos. White people were often given considerable grace and understanding even when they demonstrated dangerous behavior, while People of Color, in particular Black men, were given little to no grace or understanding even for minor and less threatening actions. For example, one video of an armed White

man showed an officer speaking calmly and reiterating the person's right to carry a firearm. *In contrast, in videos where People of Color were armed or even unarmed, police officers treated them as threats and moved towards use of force with great speed.* Such patterns echoed and reinforced popular narratives about, and attitudes toward, communities of color as more 'dangerous' in clear distinction to White people." (Exhibit C, page 8 of 26, emphasis added); and

g. "It was a very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats. In one example, we watched a police officer give a White-presenting man seven minutes of grace and conversation despite his suspicious behavior, while in several other videos a Black man was shot within seconds of being approached by an officer. The pattern we witnessed was that White community members in crisis are allowed to be in crisis; whereas Black community members, whether in crisis or not, are perceived with suspicion as threats." (Exhibit C, page 10 of 26).

68. Each of the above-quoted findings from the Community Report was true.

69. On April 23, 2021, the Kroll Final Report (described above), provided the following findings from its assessments of APD Training Academy training practices:

a. "[S]ome Academy instructors implicitly taught their students to be biased in enforcing the law. . . .[S]ome of the cadets perceived that the bias was inherently a part of Academy culture and that instructors were indoctrinated into that culture." (Exhibit E, page 42 of 113); and

b. "According to the cadets interviewed, while APD 'talked a good game' about being inclusive, in reality, they perpetuated exclusion." (Exhibit E, page 42 of 113).

70. Each of the above-quoted findings from the Kroll Final Report was true.

71. On information and belief, the City of Austin and the APD maintain other policies, practices and customs that reinforce, encourage, and tolerate the disproportionate use of excessive force against Hispanic and Black citizens and in predominantly Hispanic and Black neighborhoods. These policies and procedures include, without limitation, investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and complaints involving officer use of force. On information and belief, these additional policies, practices, and customs reinforce and exacerbate the pervasive APD culture that encourages and tolerates racially disproportionate use of excessive force by Austin police officers.

D. The City of Austin policies, practices, and customs demonstrably caused excessive force to be disproportionately directed at Black and Hispanic persons in Black and Hispanic communities.

72. For many years prior to the shooting of Alex Gonzales, the City of Austin has exhibited a demonstrable racial bias in its policing practices, particularly with respect to the use of lethal force and excessive force against Hispanic and Black individuals and/or in predominantly Hispanic or Black neighborhoods. The racial bias in policing outcomes is a direct result of the policies, practices, and customs of the City of Austin and APD, including but not limited to the training methods used to train officers at the APD Training Academy.

73. In 2016, the Center for Policing Equity conducted an assessment of City of Austin policing data for the years 2014 and 2015 and released a research report entitled "The Science of

Policing Equity: Measuring Fairness in the Austin Police Department" (herein the "CPE Report"). A copy of the CPE Report as published in October 2016 and revised in May 2017 is attached as Exhibit G and is incorporated herein by reference.

74. The CPE Report found that Austin police officers used more force in the neighborhoods where Black and Hispanic Austinites live as compared to use of force in predominantly White neighborhoods. Even after adjusting for crime and poverty variables, the CPE Report found that Austin police officers' use of force in Black and Hispanic neighborhoods was disproportionate and unjustified. The CPE Report stated:

a. "The raw data point to a disparity of treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty." (Exhibit G, page 2 of 18);

b. "Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA [metropolitan statistical area]." (Exhibit G, page 11 of 18);

c. "Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin's neighborhoods with a higher percentage of black or Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood *were statistically significant positive predictors of police use of force*." (Exhibit G, page 12 of 18, emphasis added); and

d. "[A]nalyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained.** In other words, community-level explanations of use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks." (Exhibit G, page 15 of 18, emphasis in original).

75. Each of the above-quoted statements from the CPE Report was true.

76. On December 5, 2019 Austin City Council Resolution 66 (described above) recognized racial biases in APD policing practices and policing outcomes:

a. "[T]he City of Austin acknowledges the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy." (Exhibit F, page 1 of 12); and

b. "[T]he Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to cause severe force in communities where African-American and Latinos live, even after controlling for factors such as community crime and poverty rates." (Exhibit F, page 1 of 12).

77. Each of the above-quoted statements from Resolution 66 was true.

78. In November 2020, the Joyce James Report further documented the racial bias and disparities in the APDs use of lethal force and excessive force:

a. "Findings showed that residents in Austin neighborhoods with a higher percentage of African American or Hispanic/Latinx residents, those in poverty, and neighborhoods with higher crime rates, had disproportionate force and severity of force used upon them. When these possibilities other than race were adjusted statistically, African American and Hispanic/Latinx residents still experienced higher rates of use of force." (Exhibit B, page 125 of 152); and

b. "The Austin Police Departments Research and Planning Unit (2017) also produced data on use of force (along with other measures). In this case as well, when the use of force from 2014 to 2016 by race and ethnicity was compared to the population, African Americans and Hispanics/Latinxs had disproportionate force used upon them relative to Whites." (Exhibit B, page 125 of 152).

79. Each of the above-quoted statements from the Joyce James Report was true.

IV. CAUSE OF ACTION – 42 U.S.C. §1983

80. Plaintiffs assert this cause of action against the City of Austin pursuant to 42 U.S.C. §1983 and *Monell v. Dept. of Social Services of City of New York,* 436 U.S. 658 (1978). Each Plaintiff asserts his or her own individual cause of action under §1983 as a wrongful death beneficiary of Alex Gonzales, Jr. under Texas law pursuant to Tex. Civ. Pr. & Rem. Code §71.004(b). Each Plaintiff also asserts Z.A.G.'s cause of action under §1983 as a wrongful death beneficiary and as "Next Friend" of Z.A.G. under Tex. Civ. Pr. & Rem. Code §71.004(b). Plaintiffs incorporate by reference all allegations asserted in Sections I – III, *supra*.

A. City of Austin employees who were acting under color of law violated the constitutional rights of Alex Gonzales, Jr.

81. The City of Austin employed Officer Gabriel Gutierrez and Officer Luis Serrato as police officers at the time each of them respectively shot Alex Gonzales, Jr. ("Alex"). Gutierrez and Serrato each acted under color of law when each of them separately shot Alex.

82. Even though Gutierrez was "off-duty" at the time he initially encountered Alex, all of his relevant interactions with Alex (including shooting Alex) were undertaken under color of law. The APD General Orders in effect on January 5, 2021[2] expressly permitted off-duty officers to take law enforcement actions while off-duty.[3] The APD General Orders at the time also expressly authorized any off-duty officers to carry a firearm while off-duty as "a law enforcement officer as authorized by this order . . . ."[4] The APD General Orders at the time required that, when an off-duty officer decides to intervene and take a law enforcement action, the officer "should clearly identify himself as a police officer to those involved in the situation, if practicable."[5] Under the authority granted to him by the APD General Orders as an off-duty officer, Gutierrez made a decision to intervene with respect to Alex and the other passengers in Alex's vehicle, and Gutierrez undertook law enforcement actions with respect to Alex, including but not limited to using lethal force and shooting Alex. After he shot Alex, Gutierrez can be heard on the 911 call recording shouting at Alex in an attempt to identify himself as an Austin police officer. Gutierrez also can

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[2] On information and belief, the APD General Orders in effect on January 5, 2021 were the APD General Orders issued on November 12, 2020.
[3] *See generally*, Austin Police Department General Orders Issued November 12, 2020 at §364.
[4] *See Id.* at §364.3(a).
[5] *See Id.* at §364.4.1(b).

be heard on the 911 call recording continuing to take law enforcement actions with respect to Alex by shouting verbal commands for compliance.

83. Gutierrez shot Alex without provocation or justification. Gutierrez had no reasonable basis to perceive that Alex posed a threat of danger to Gutierrez or to anyone else. Gutierrez acted with indifference to the potential harm to bystanders such as the other passengers in Alex's car. Gutierrez was the aggressor in his encounter with Alex. Gutierrez's actions were responsible for creating the initial confrontation and for escalating the events that ensued. No reasonable police officer would have used deadly force against Alex under these circumstances. Gutierrez's actions amounted to excessive force that was objectively unreasonable, in violation of Alex's rights under the Fourth Amendment and Fourteenth Amendment to the United States Constitution.

84. Serrato was an on-duty Austin police officer at the time he responded on the scene of Alex's shooting after Gutierrez called 911. Serrato's actions with respect to Alex were undertaken under color of law.

85. Serrato fatally shot Alex without provocation or justification. Serrato fatally shot Alex while Alex was struggling to render aid to the wounded passenger and check on the welfare of Alex's infant son who was in the back seat of the car. At the time Serrato fatally shot Alex, Alex did not have a gun in his hand and Alex did not point a gun at anyone. Alex made no aggressive move toward anyone that would indicate Alex posed a danger at all. Alex had already suffered a gunshot wound from being shot by Gutierrez, and Alex was visibly struggling with his bodily movements. Serrato acted with indifference to the potential harm to bystanders. No reasonable police officer would have used deadly force against Alex under these circumstances. The actions

of Serrato amounted to excessive force that was objectively unreasonable, in violation of Alex's rights under the Fourth Amendment and Fourteenth Amendment to the United States Constitution.

86. The violations of Alex's constitutional rights by Gutierrez and Serrato were a cause of Alex's death and the damages alleged below.

B. The City of Austin is liable for damages caused by the violation of Alex's federal constitutional rights.

87. Defendant City of Austin implemented the following policies, practices, and customs prior to and on January 5, 2021:

a. As alleged above, Austin utilized the Austin Police Department Training Academy to train Austin police officers to adopt a paramilitary culture that emphasized and promoted a "warrior mindset" and an "us versus them" approach to policing that permitted, encouraged, and tolerated the use of excessive force;

b. As alleged above, the APD Training Academy used training materials and training techniques that created, encouraged, and tolerated a racist policing culture that particularly directed excessive force toward Hispanic and Black persons and/or in incidents occurring in predominantly Hispanic or Black neighborhoods;

c. As alleged above, the Austin Police Department maintained a long history of racially discriminatory bias in its policing practices, including the disproportionate use of lethal force and excessive force toward Hispanic or Black persons and/or in incidents occurring in predominantly Hispanic or Black neighborhoods; and

d. On information and belief, Austin has other policies, practices and customs that reinforced and exacerbated the above policies, practices, and customs, including but not limited to investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and complaints involving officer use of force.

88. Prior to and on January 5, 2021, each of the policies, practices, and customs alleged above was persistent and widespread throughout the policing practices of the Austin police department.

89. Prior to and on January 5, 2021, each of the policies, practices, and customs alleged above was known to one or more City of Austin policymakers. One or more Austin policymakers ratified, adopted, or approved of each of the alleged policies, practices, and customs prior to and on January 5, 2021. One or more Austin policymakers acted with deliberate indifference to the known and obvious consequences of the identified policies, practices, and customs, including the likely violations of the constitutional rights of people harmed by the identified policies, practices and customs.

90. The identified Austin policies, practices, and customs were the moving force that caused the violation of Alex's constitutional rights and the injury and damages he suffered therefrom, including his death. Gutierrez and Serrato each received police training through the APD training academy, in which they were trained within a paramilitary culture that taught them a "warrior mindset" and an "us versus them mentality" that encouraged and promoted excessive force. Gutierrez and Serrato each were taught, through the APD Training Academy, to perceive Hispanic individuals in predominantly Hispanic neighborhoods as an inherent and imminent threat of danger. Gutierrez and Serrato each were taught, through the APD Training Academy, policing

methods that encouraged acceleration of force and quick use of lethal force when responding to incidents involving Hispanic males in Hispanic neighborhoods. Alex was a Hispanic male. Gutierrez and Serrato shot Alex in an area of Austin that is an "overwhelming Hispanic population center."[6] Alex was shot in the same neighborhood in which Austin police officer Christopher Taylor shot and killed Mike Ramos less than one year earlier, in a particularly high-profile officer-involved shooting.

91. On information and belief, Gutierrez and Serrato each believed that his respective actions related to each officer's shooting of Alex would meet with the approval of supervisors and other Austin investigators of the events because each believed that his actions complied with the City of Austin's and the APD's policies, practices, and customs.

92. On information and belief, the City of Austin has further ratified the policies, practices, and customs alleged above by failing to conduct an adequate internal investigation of the shooting of Alex, by failing to take appropriate disciplinary and/or administrative action with respect to Gutierrez and/or Serrato, and by failing to implement changes to its policies, practices and customs in response to the shooting of Alex and other similar incidents.

C. The violation of Alex's constitutional rights caused significant damages.

93. Alex Gonzales, Jr. was a happy, loving man who adored his parents, who cherished his newborn son, and who embraced his new role as a father to Z.A.G. Alex's tragic and unnecessary death at the hands of police violence, acting in violation of Alex's constitutional rights, caused severe and permanent damages, including Alex's death.

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[6] "Maps of Hispanic household concentrations from Census 2000 reveal the emergence of three overwhelmingly Hispanic population centers in Austin: lower east Austin (which also serves as the political bedrock of Austin's Hispanic community), greater Dove Springs, and the St. Johns area." *Top Ten Demographic Trends in Austin, Texas*, austintexas.gov (https://www.austintexas.gov/page/top-ten-demographic-trends-austin-texas).

94. Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera each seek to recover the following categories of damages in their respective capacity as wrongful death beneficiaries of Alex, pursuant to Texas Civil Practice and Remedies Code §71.004(b):

a. Mental anguish damages (past and future) for the emotional pain, torment, and suffering each Plaintiff has experienced and will continue to experience because of the death of their son;

b. Physical pain and suffering (past and future) each Plaintiff has experienced and will continue to experience because of the death of their son;

c. Loss of companionship and society damages (past and future) for the loss of positive benefits flowing from the love, comfort, companionship, and society that each Plaintiff would have received from Alex had he lived; and

d. Pecuniary loss damages (past and future) for the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that each Plaintiff would have received from Alex had he lived.

95. In their capacity as "Next Friend" to Z.A.G., Plaintiffs seek to recover, on behalf of Z.A.G., the following categories of wrongful death damages suffered by Z.A.G. pursuant to Texas Civil Practice and Remedies Code §71.004(b):

a. Future lost wages, lost earning capacity, and loss of economic support from Alex Gonzales, Jr.;

b. Mental anguish damages (past and future) for the emotional pain, torment, and suffering Z.A.G. has experienced and will continue to experience because of the death of Z.A.G.'s father Alex;

c. Physical pain and suffering (past and future) Z.A.G. has experienced and will

continue to experience because of the death of Z.A.G.'s father Alex;

d. Loss of companionship and society damages (past and future) for the loss of positive benefits flowing from the love, comfort, companionship, and society that Z.A.G. would have received from his father Alex had he lived; and

e. Pecuniary loss damages (past and future) for the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that Z.A.G. would have received from Alex had he lived.

96. Each Plaintiff (both individually and as "Next Friend" to Z.A.G.) further seeks to recover the following categories of damages:

a. Prejudgment and post-judgment interest;

b. Costs of court;

c. Reasonable and necessary attorneys' fees incurred by Plaintiffs through trial, along with reasonable and necessary attorneys' fees that may be incurred by Plaintiffs for any post-trial proceedings or appeal, pursuant to 42 U.S.C. §1988; and

d. Any further and additional relief to which Plaintiffs may be legally entitled.

V. REQUEST FOR A JURY TRIAL

97. Plaintiffs request a jury trial on all issues that legally may be tried to a jury.

VI. PRAYER FOR RELIEF

98. Plaintiffs request that the City of Austin be summoned to appear and answer Plaintiffs' allegations. After a jury trial regarding the asserted claims and causes of action, Plaintiffs pray the court enter judgment in their favor on the asserted claims under 42 U.S.C. §1983,

assess monetary damages for the injuries alleged above, and award any other relief to which Plaintiffs are legally entitled.

Dated: April 3, 2023

Respectfully Submitted,

/s/ Donald Puckett
Donald Puckett (Texas Bar No. 24013358)
Clifford Chad Henson (Texas Bar No. 24087711)
(*Application for admission forthcoming*)
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Donald Puckett
Donald Puckett

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR. AND	§	
ELIZABETH HERRERA	§	
Plaintiffs,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 1:22-cv-655-RP**
CITY OF AUSTIN,	§	
Defendant.	§	
	§	

DEFENDANT CITY OF AUSTIN'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiffs' First Amended Complaint (Doc. No. 26). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' First Amended Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment. [1]

1. Defendant denies the allegations contained in Paragraph 1.

2. Defendant denies the allegations contained in Paragraph 2.

3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies same.

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' First Amended Complaint.

4. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies same.

5. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies same.

7-10. Defendant admits the allegations contained in Paragraphs 7-10.

11-39. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraphs 11-39 and therefore denies same.

40. Defendant denies the allegations contained in Paragraph 40.

41. Defendant admits the allegations contained in Paragraph 41.

42. Defendant admits that the quoted language in Paragraph 42 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 42 and therefore denies same.

43. Defendant denies the allegations contained in Paragraph 43.

44. Upon information and belief, Defendant admits the allegations contained in Paragraph 44.

45. Defendant admits that the quoted language in Paragraph 45 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 45 and therefore denies same.

46. Defendant denies the allegations contained in Paragraph 46.

47. Upon information and belief, Defendant admits the allegations contained in Paragraph 47.

48. Defendant admits that the quoted language in Paragraph 48 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 48 and therefore denies same.

49. Defendant admits that the quoted language in Paragraph 49 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 49 and therefore denies same.

50. Defendant denies the allegations contained in Paragraph 50.

51. Upon information and belief, Defendant admits the allegations contained in Paragraph 51.

52. Defendant admits that the quoted language in Paragraph 52 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 52 and therefore denies same.

53. Defendant denies the allegations contained in Paragraph 53.

54. Upon information and belief, Defendant admits the allegations contained in Paragraph 54.

55. Defendant admits that the quoted language in Paragraph 55 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 55 and therefore denies same.

56. Defendant denies the allegations contained in Paragraph 56.

57. Defendant denies the allegations contained in Paragraph 57.

58. Defendant denies the allegations contained in Paragraph 58.

59. Defendant admits that the quoted language in Paragraph 59 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 59 and therefore denies same.

60. Defendant denies the allegations contained in Paragraph 60.

61. Defendant admits that the quoted language in Paragraph 61 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 61 and therefore denies same.

62. Defendant admits that the quoted language in Paragraph 62 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 62 and therefore denies same.

63. Defendant admits that the quoted language in Paragraph 63 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 63 and therefore denies same.

64. Defendant denies the allegations contained in Paragraph 64.

65. Defendant admits that the quoted language in Paragraph 65 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 65 and therefore denies same.

66. Defendant denies the allegations contained in Paragraph 66.

67. Defendant admits that the quoted language in Paragraph 67 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 67 and therefore denies same.

68. Defendant denies the allegations contained in Paragraph 68.

69. Defendant admits that the quoted language in Paragraph 69 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 69 and therefore denies same.

70. Defendant denies the allegations contained in Paragraph 70.

71. Defendant denies the allegations contained in Paragraph 71.

72. Defendant denies the allegations contained in Paragraph 72.

73. Defendant admits that the quoted language in Paragraph 73 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 73 and therefore denies same.

74. Defendant admits that the quoted language in Paragraph 74 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 74 and therefore denies same.

75. Defendant denies the allegations contained in Paragraph 75.

76. Defendant admits that the quoted language in Paragraph 77 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 76 and therefore denies same.

77. Defendant denies the allegations contained in Paragraph 77.

78. Defendant admits that the quoted language in Paragraph 78 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 78 and therefore denies same.

79. Defendant denies the allegations contained in Paragraph 79.

80. Defendant denies the allegations contained in Paragraph 80.

81. Defendant admits that it employed Officers Gutierrez and Serrato. Defendant denies the remaining allegations contained in Paragraph 81.

82-83. Defendant denies the allegations contained in Paragraphs 82 and 83.

84. Defendant admits the allegations contained in Paragraph 84.

85-96. Defendant denies the allegations contained in Paragraphs 85-96.

97. Paragraph 97 merely contains Plaintiff's request for a jury trial and no response is required from the Defendant.

98. Defendant denies the allegations contained in Paragraph 98.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION

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ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 17th day of April, 2023.

Via CM/ECF:

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ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR. and ELIZABETH HERRERA, ***Plaintiffs***,	§	
v.	§	**Case No. 1:22-cv-00655-RP**
CITY OF AUSTIN, ***Defendant***.	§	

JESSICA ARELLANO, individually and as next friend of Z.A., minor child, and wrongful death beneficiary of Alex Gonzales, Jr., ***Plaintiffs***,	§	
v.	§	**Case No. 1:23-cv-8-RP**
THE CITY OF AUSTIN, GABRIEL GUTIERREZ, and LUIS SERRATO, ***Defendants***.	§	

ALEX GONZALES, SR., individually as a wrongful death beneficiary of Alex Gonzales, Jr., and as the Representative of the Estate of Alex Gonzales, Jr., Deceased, and ELIZABETH HERRERA, aka Elizabeth Gonzales, individually as a wrongful death beneficiary of Alex Gonzales, Jr., ***Plaintiffs***,	§	
v.	§	**Case No. 1:23-cv-9-RP**
LUIS SERRATO, GABRIEL GUTIERREZ, and THE CITY OF AUSTIN, ***Defendants***.	§	

DEFENDANTS' JOINT MOTION TO CONSOLIDATE

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants, **Officer Luis Serrato**, **Officer Gabriel Gutierrez**, and the **City of Austin** file this Joint Motion to Consolidate the above captioned lawsuits pursuant to Federal Rule of Civil Procedure 42(a)(2) and would respectfully show the Court as follows:

I. BACKGROUND & PROCEDURAL HISTORY

A. The Incident.

1. In the midnight hour of January 5, 2021, Plaintiff Jessica Arellano and decedent Alex Gonzales Jr. were driving with Z.A.—their minor child. Meanwhile, off-duty Officer Gabriel Gutierrez was returning to his apartment from the gym and was driving in the same direction. After Officer Gutierrez took a left hand turn onto Wickersham Lane, Gonzalez Jr. aggressively chased after Gutierrez's car by driving close behind. Subsequently, Gonzales Jr. continued his pursuit and pulled up extremely close to left side of Officer Gutierrez's car—essentially pinning Officer Gutierrez's car between the curb and Gonzales's car.[1]

2. At that point, Officer Gutierrez generally recounts that Gonzales Jr. brandished a firearm and menaced Officer Gutierrez with this weapon due to his extreme displeasure with Gutierrez's driving. Suddenly fearing for his life, Officer Gutierrez withdrew his own firearm and fired at Gonzales Jr. in order to defend himself from a perceived imminent attack. Gonzales Jr. then drove a short distance forward on Wickersham Lane and came to a stop. Officer Gutierrez called 911 to request backup from on-duty officers and to stage EMS to provide medical care once the scene was secure. On this call, Officer Gutierrez noted that he could see that Gonzales Jr. was still holding his firearm in his hand.[2]

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[1] **Ex. 1**, *Filed Under Seal, Security Video*, **00:00 – 00:41**.
[2] **Ex. 2**, *Filed Under Seal, Ofc. Gutierrez 911 Call*, **00:00 – 00:45** (reporting incident), **00:45 – 01:00** (informing the Dispatcher that Gonzales Jr. still had a gun in his hand at this time).

3. On-duty Officer Luis Serrato arrived at 12:36 a.m., and his actions were captured on his body-worn camera.[3] Upon arrival, Officer Serrato parked his APD police vehicle behind off-duty Officer Gutierrez and his car. Officer Serrato approached the scene, and loudly commanded Gonzales Jr. to put his hands up numerous times in both English and Spanish. During this time, Gonzales Jr. was standing by his driver's side door—without his gun—and he oscillated from: putting his hands up, to putting his hands on the car, to putting his hands down at his sides, to sticking his head into the car and making reaching motions inside the vehicle. Once Gonzales Jr. started reaching into his vehicle, both Officers began yelling "do not reach."[4]

4. A minute after arrival, Officer Serrato began commanding Gonzales Jr. to start walking away from the car towards him. Instead of obeying this command, Gonzales Jr. walked all the way around the back of his vehicle to the rear passenger-side door while Officer Serrato yelled "no."[5] Then, Gonzales Jr. began moving quickly, prompting Officer Serrato to begin yelling "do not reach" while he swiftly repositioning himself to have a better view of Gonzales Jr.[6] Unfortunately, Gonzales Jr. did not heed this command, and he opened the car door and reached inside. Suddenly fearing that the non-compliant Gonzales Jr. was reaching for his previously seen firearm or some other deadly weapon, Officer Serrato made the split-second decision to open fire on Gonzales Jr. in order to protect himself and others from imminent harm.[7] Gonzales Jr. died on scene.

[3] **Ex. 3**, *Filed Under Seal, Serrato BWC*, **00:05**.
[4] **Ex. 3** at **00:15 – 00:55**.
[5] **Ex. 3** at **01:00 – 00:10**.
[6] **Ex. 3** at **01:14 – 01:20**.
[7] **Ex. 3** at **01:25 – 01:30**.

5. Subsequent on scene investigators observed a black handgun on the driver's side floorboard of Gonzales Jr.'s car.[8] DNA from both Gonzales Jr. and Plaintiff Arellano was confirmed to be on this handgun after DNA testing.[9]

B. Procedural History.

6. Three separate lawsuits have been filed arising out of this exact incident.

7. **First** was cause number 1:22-cv-655, which was filed on July 6, 2022. This lawsuit was filed by decedent Gonzales Jr.'s parents—Plaintiffs Gonzales Sr. and Elizabeth Herrera—against the City of Austin as the sole defendant. Pursuant to 42 U.S.C. §1983 the lawsuit alleges that the City of Austin is liable under a *Monell* theory of liability for the allegedly unconstitutional actions of Officers Gutierrez and Serrato during the above-described incident.[10]

8. Though it was filed 43 weeks ago, very little has occurred in the lawsuit. Officer Gutierrez sat for a deposition on September 27, 2022. Officer Serrato sat for a deposition on November 1, 2022. Both Officers generally invoked their Fifth Amendment privilege and declined to answer questions touching and concerning this incident due to an ongoing criminal investigation by the Travis County District Attorney. Since that time, a Travis County Grand Jury "no-billed" both Officers in January 2023 for their conduct during this incident.

9. **Second** was cause number 1:23-cv-8, which was filed on January 3, 2023. This lawsuit was filed by Plaintiff Jessica Arellano—the mother of Z.A.—against the City of Austin and Officers Gutierrez and Serrato. Pursuant to 42 U.S.C. §1983 the lawsuit alleges that the City of Austin is liable under a *Monell* theory of liability, and that Officers Gutierrez and Serrato

[8] **Ex. 4**, *Filed Under Seal, Arellano DNA Probable Cause Affidavit*, **pg. 2.**
[9] **Ex. 5**, *Filed Under Seal, DNA Testing*, **pgs. 1 – 7** (highlighted by counsel).
[10] *See* Pls.' Orig. Compl., pgs. 1 – 10, Dkt. # 1 (1:22-cv-00655-RP).

violated Plaintiff Arellano's and Gonzales Jr.'s Fourth Amendment rights to be free of excessive force.[11] This lawsuit just began, and no significant discovery or litigation has taken place.

10. **Third** and finally is cause number 1:23-cv-9, which was also filed on January 3, 2023. Curiously[12], this lawsuit was also filed by decedent Gonzales Jr.'s parents—Plaintiffs Gonzales Sr. and Elizabeth Herrera. This time, these Plaintiffs have only filed suit against the individual officers, alleging nearly identical claims that Plaintiff Arellano alleged in her lawsuit, which was filed on that same day. Namely, this lawsuit also alleges that Officers Gutierrez and Serrato violated Gonzales Jr.'s Fourth Amendment rights for their conduct during the incident.[13] This lawsuit also just began, and no significant discovery or litigation has taken place.

11. The Joint Defendants now file this Motion to Consolidate pursuant to Federal Rule of Civil Procedure 42(a)(2), because these three lawsuits should be combined into one singular case with one singular trial date.

II. LEGAL STANDARD

12. Federal Rule of Civil Procedure 42(a)(2) provides that a court may consolidate actions that involve common questions of law or fact.[14] In the Fifth Circuit, "[c]onsolidating actions in a district court is proper when the cases involve common questions of law and fact, and the district judge finds that it would avoid unnecessary costs or delay."[15] A district court may order

[11] *See* Pls.' Orig. Compl. pgs. 24 – 28, Dkt. # 1 (1:23-cv-8-RP) (Plaintiff Arellano's suit encompasses a Fourth Amendment claim for Gonzales Jr. on behalf of the minor child).
[12] It is unclear to the undersigned Defendants why these Plaintiffs did not merely request leave to amend their prior lawsuit in cause number 1:22-cv-00655-RP.
[13] Pls.' Orig. Compl. pgs. 28 – 33, Dkt. # 1 (1:23-cv-9-RP).
[14] FED. R. CIV. P. 42.
[15] *St. Bernard Gen. Hosp. Inc. v. Hosp. Serv. Ass'n of New Orleans, Inc.*, 712 F.2d 978, 989 (5th Cir. 1983).

consolidation despite the opposition of the parties.[16] Granting or denying consolidation is purely discretionary.

13. "In weighing whether to consolidate actions, courts generally consider factors such as (1) whether the actions are pending before the same court; (2) whether the actions involve a common party; (3) any risk of prejudice or confusion from consolidation; (4) the risk of inconsistent adjudications of common factual or legal questions if the matters are tried separately; (5) whether consolidation will reduce the time and cost of trying the cases separately; and (6) whether the cases are at the same stage of preparation for trial."[17]

III. ARGUMENTS & AUTHORITIES

A. This Court should use its discretion to save these Defendants from the same trial three separate times, because all of the factors weigh in favor of consolidation.

14. The same lawsuit has been filed three separate times against these Defendants.[18] Though the stylistic presentation of the case differs between the three Complaints, at bottom, each lawsuit complains of: (a) the same incident, (b) against the same parties, while (c) bringing identical legal claims under 42 U.S.C. § 1983 for excessive force under the Fourth Amendment with an accompanying *Monell* claim against the City of Austin.[19] Since these lawsuits are all pending before this Court, it is indisputable that factors 1 and 2 weigh in favor of consolidation.

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[16] *Id*. (citing *In re Air Crash Disaster at Florida Everglades on Dec. 29, 1972,* 549 F.2d 1006, 1013 (5th Cir. 1977).

[17] *Samataro v. Keller Williams Realty, Inc*, No. 1:18-CV-775-RP, 2021 WL 3596303, at *2 (W.D. Tex. Apr. 27, 2021) (citing *Arnold & Co., LLC v. David K. Young Consulting, LLC*, No. SA:13-CV-00146-DAE, 2013 WL 1411773, at *2 (W.D. Tex. Apr. 8, 2013).

[18] The first lawsuit only brings a *Monell* claim, but such a claim encompasses the underlying Constitutional violations alleged in the newer filings.

[19] ***See*** Pls.' Orig. Compl. pgs. 28 – 33, Dkt. # 1 (1:23-cv-9-RP); ***see also*** Pls.' Orig. Compl., pgs. 28 – 29, Dkt. # 1 (1:22-cv-00655-RP); ***see also*** Pls.' Orig. Compl. pgs. 24 – 28, Dkt. # 1 (1:23-cv-8-RP).

Accordingly, the undersigned will address the remaining factors. Each reveal that consolidation is eminently appropriate.

a. Factors 3 and 4 weigh in favor of consolidation, because these Defendants will be prejudiced if they must submit to three separate trials, which would inevitably create the potential for inconsistent adjudications.

15. Plaintiffs Gonzales Sr. and Elizabeth Herrera (hereinafter "the Opposed Plaintiffs") have refused to concede that these lawsuits should be consolidated into one proceeding. Instead, the Opposed Plaintiffs submit that these three lawsuits should only be consolidated for discovery purposes, but that it is too early to consolidate these cases for all purposes—including trial. Conversely, Plaintiff Arellano has agreed not to oppose consolidation.

16. Courts across the United States regularly consolidate 42 U.S.C §1983 claims against officers and municipalities ***under these exact circumstances*** as a matter of course.[20] In *Kong Meng Xiong*, the Eastern District of California thoroughly analyzed this exact issue in a case involving two "different plaintiffs who are represented by separate counsel…" both of whom

[20] *Flanagan v. Anne Arundel Cnty*, 593 F. Supp 2d 803, 806 (D. Md. 2009) (holding "[t]he facts of each case are nearly identical, all three plaintiffs are represented by the same counsel and are proceeding against the same defendants, the papers are virtual facsimiles of one another, and identical counts are alleged. Specifically, the plaintiffs raise a single federal claim under 42 U.S.C. § 1983 for a violation of their federal rights. Because each action raises identical questions of law and fact, the Court, by separate Order, CONSOLIDATES the actions pursuant to Federal Rule of Civil Procedure 42(a)"); ***see also*** *Adams v. Szczerbinski*, 329 Fed. Appx. 19, 22 (7th Cir. 2009) (holding consolidating a *Monell* claim and an excessive force claim was not an abuse of discretion); ***see also*** *Skovgard v. Pedro*, No. 3:08-CV-071, 2010 WL 546368, at *1, fn 1 (S.D. Ohio Feb. 10, 2010, aff'd, 448 Fed. Appx. 538 (6th Cir. 2011) (noting "Plaintiffs originally filed separate suits against Defendants Pedro, Mannix, 1st Choice Security, Inc. and Kaminski (case number 3:08cv071) and against Defendant City of Kettering (case number 3:09cv082), as a result of the same incident. On April 9, 2009, the Court sustained a Motion to consolidate the two cases, administratively processed case number 3:09cv082 and ordered that all future filings be made in case 3:08cv071).

brought excessive force and *Monell* claims for their injuries arising out of the same officer involved shootings.[21]

17. The *Kong Meng Xiong* Court granted the Defendants' Motion to Consolidate, finding that the excessive force claims and the *Monell* claims necessarily shared overlapping issues of fact and law because they arose out of the same incident. Crucially, the Eastern District of California noted that if the court did ***not*** consolidate these cases, "there [was] a risk of inconsistent judgments" and consolidation was accordingly needed to "alleviate the risk of inconsistent judgments or any collateral estoppel effect of a dispositive decision in either case…".[22] The Court noted that this concern was especially pressing considering that the Plaintiffs were represented by different counsel that might pursue different strategies. The *Kong Meng Xiong* Court's analysis is directly on point to the issue facing this Court, and the undersigned have attached this Order as **Exhibit 6** for the Court's convenience.

18. Accordingly, factors 3 and 4 weigh in favor of a stay.

b. Factor 5 weighs in favor of consolidation to reduce the burden on these Defendants. The Opposed Plaintiffs' objections to consolidation are nebulous and appear to be based on their desire to "wait and see" if they can avoid consolidation after more discovery.

19. In support for their resistance, the Opposed Plaintiffs have claimed during conferencing that some nebulous and yet to be revealed evidence might render consolidation inappropriate sometime in the future. This is not the standard, and other Courts have chided Plaintiffs for wanting to take a "wait and see" approach to consolidation without being able to articulate meritorious arguments opposing it.[23]

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[21] **Ex. 6**, *Order, Kong Meng Xiong v. City of Merced*, No. 1:13-CV-00083-SK0 (E.D. Cal Oct. 01, 2013), **pg. 2**.
[22] **Ex. 6** at **pg. 10**.
[23] *Simon v. Muschell*, No. 1:09-CV-301 JTM, 2010 WL 3946528, at *2 (N.D. Ind. Oct. 4, 2010).

20. In *Simon*, identical plaintiffs filed a *Bivens* action against IRS Special Agents for violating their Fourth Amendment Rights for allegedly presenting false information in a probable cause affidavit, and allegedly unlawfully executing the resulting warrant. Simultaneously, those same plaintiffs filed a separate Tort Claims lawsuit against the United States for the exact same conduct.[24] The *Simon* defendants filed a motion to consolidate the two cases.

21. In opposing that motion, the *Simon* plaintiffs "consent[ed] to consolidating the cases for discovery" but argued that it was "too early to consolidate the case for all purposes." The District Court rejected that argument and noted that "many of the plaintiffs' reasons for objecting are without merit."[25] Instead, the *Simon* Court noted that the plaintiffs "allege almost identical facts in support of their claims and both cases turn on whether the search warrant was properly issued and executed."[26] In sum, the Court noted that the plaintiffs only proffered one objection with any merit, and it was insufficient to substantiate their objection to consolidating their lawsuits for trial regarding the ***exact*** same conduct.[27]

22. The same reasoning applies here. These Joint Defendants should be allowed to face the allegations arising out of this incident in one lawsuit and in one trial due to the "commonality of the factual and legal issues" and to decrease the "burden on the parties and witnesses," and to conserve judicial resources.[28] Accordingly, factor 5 weighs in favor of consolidation.

c. Factor 6 weighs in favor of consolidation. The two latest lawsuits were filed recently and on the same day. Conversely, the first lawsuit has proceeded slowly, and only taken the depositions of the Officers.

[24] *Id*. at *1.
[25] *Id*. at *2.
[26] *Id*. at *2.
[27] *Id*. at *3.
[28] *Id.* at *3.

23. Finally, factor 6 weighs in favor of consolidation. It is beyond dispute that case number 1:23-CV-8 and 1:23-CV-9 were filed recently and on the same day—January 3, 2023.[29] Those cases are thus demonstrably in the same "stage of preparation for trial."[30] Accordingly, the only way this factor ***might*** weigh against consolidation would be if case number 1:22-CV-00655 was in a substantially different stage of preparation.

24. The first case has not proceeded in any meaningful way. As noted above, other than exchanging written discovery—which can easily be reproduced in the two newest cases—the only event that has occurred in that case are the depositions of Officer Serrato and Officer Gutierrez. Those depositions occurred ***before*** the Grand Jury no-billed Serrato and Gutierrez regarding this incident, and thus contain a plethora of Fifth Amendment invocations that may no longer be appropriate. Because no other event of note has happened in the first lawsuit, the sixth factor does not weigh against a stay.

IV. CONCLUSION & PRAYER

25. As demonstrated above, these Joint Defendants have met their burden to establish that consolidating these lawsuits is appropriate, and that they will be prejudiced if they are not joined into one lawsuit. Tellingly, Plaintiff Arellano has agreed not to oppose consolidating these cases. Conversely, the Opposed Plaintiffs' anticipated objections are nebulous, and rely on their hope that they can avoid consolidation based on some as of yet unarticulated evidence. The Court should reject this anticipated argument and utilize its discretion to consolidate these matters.

26. WHEREFORE PREMISES CONSIDERED, **Defendant Gutierrez**, **Defendant Serrato**, and **Defendant City of Austin** respectfully request that this Court GRANT this Joint Motion to

[29] Pls.' Orig. Compl. Dkt. # 1 (1:23-cv-8-RP); *see also* Pls.' Orig. Compl. pgs. 28 – 33, Dkt. # 1 (1:23-cv-9-RP).
[30] *Samataro*, 2021 WL 3596303, at *2.

Consolidate these cases pursuant to Federal Rule of Civil Procedure 42(a)(2) and join cause numbers (1) 1:22-CV-655; (2) 1:23-CV-8; and (3) 1:23-CV-9 into one consolidated case for all purposes, and to close all other open case numbers. These Defendants additionally respectfully request that this Court issue a new scheduling order similar to the Order recently issued in 1:22-CV-8, and for all other relief to which these Joint Defendants may be justly entitled in law or equity.

Respectfully submitted,

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CITY OF AUSTIN

CERTIFICATE OF CONFERENCE

Counsel for the joint defendants have complied with the Court's requirement to confer. After conference, counsel for Plaintiff Jessica Arellano is unopposed consolidation but does not join the motion.

Counsel for Alex Gonzales and Elizabeth Herrera is opposed to consolidation because they oppose consolidating for all purposes. (the "Opposed Plaintiffs").

/s/ Stephen B. Barron
Stephen B. Barron

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May, 2023, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Stephen B. Barron
Stephen B. Barron

Exhibit 1

Security Video.mp4
COA 4397

FILED UNDER SEAL

Filed Traditionally via Zip Drive to Court and via Dropbox Link to all Counsel

Exhibit 2

Officer Gutierrez 911 Call.wma
COA 4341

FILED UNDER SEAL

Filed Traditionally via Zip Drive to Court and via Dropbox Link to all Counsel

Exhibit 3

Officer Serrato BWC.mp4
COA 3979

FILED UNDER SEAL

Filed Traditionally via Zip Drive to Court and via Dropbox Link to all Counsel

Exhibit 4

Arellano DNA Probable Cause Affidavit.pdf
COA 1701 – 1705

FILED UNDER SEAL

E-FILED

Exhibit 5

DNA Testing.pdf
COA 2547 – 2553

FILED UNDER SEAL

E-FILED

Exhibit 6

Order.pdf
Kong Meng Xiong v. City of Merced,
No. 1:13-CV-00083-SK0 (E.D. Cal Oct. 01, 2013)

E-FILED

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KONG MENG XIONG,

Plaintiff,

v.

CITY OF MERCED, et al.,

Defendants.

_____

Case No. 1:13-cv-00083-SKO

ORDER GRANTING DEFENDANTS' MOTION TO CONSOLIDATE

(Doc. No. 25)

Related Action:

LUH XIONG,

Plaintiff,

v.

CITY OF MERCED, et al.,

Defendants.

_____/

Case No. 1:13-cv-00111-SKO

ORDER GRANTING DEFENDANTS' MOTION TO CONSOLIDATE

(Doc. No. 22)

I. INTRODUCTION

This action, *Kong Xiong v. City of Merced, et al.* ("*Kong Xiong*"), 1:13-cv-00083-SKO, was filed on January 17, 2013. (*Kong Xiong*, 1:13-cv-00083, Doc. 1.) The case was deemed

related to a second civil action filed on January 23, 2013, captioned *Luh Xiong v. City of Merced, et al.*(*"Luh Xiong*"), 1:13-cv-00111-SKO. Although the two actions involve different plaintiffs who are represented by separate counsel, each complaint states claims against the same three defendants: (1) City of Merced; (2) Officer James Lodwick ("Lodwick"); and (3) Officer Eduardo Chavez ("Chavez") (collectively "Defendants"). Both complaints arise out of Officers Lodwick and Chavez' discharge of their weapons on December 3, 2011, at a residence at or near 1594 Buckingham Court in Merced, California, which injured both Plaintiffs Kong Xiong and Luh Xiong[1] (collectively, "Plaintiffs").

At an initial scheduling conference of both cases held on August 8, 2013, Defendants indicated they intended to file a motion to consolidate the *Kong Xiong* and *Luh Xiong* actions. The Court set a briefing schedule, requiring that any motion to consolidate be filed no later than September 6, 2013, any opposition to the motion be filed no later than September 20, 2013, and any reply be filed no later than September 26, 2013. (Doc. 20.) A hearing on the motion was set for October 2, 2013. (Id.)

On September 6, 2013, Defendants filed a motion to consolidate the two cases, and no opposition was filed by Plaintiffs. After having considered the motion and the supporting documentation, the Court finds the motion suitable for a decision without argument, and the hearing set for October 2, 2013, is VACATED pursuant to U.S. District Court for the Eastern District of California's Local Rule 230(g). For the reasons set forth below, Defendants' motion is GRANTED.

II. BACKGROUND

A. Summary of the Complaints

1. *Kong Xiong v. City of Merced, et al.*, Case No. 1:13-cv-00083-SKO

Plaintiff Kong Xiong alleges that he attended a house party located at 1594 Buckingham Court in Merced, California. The Merced Police Department received a call that a man at the house party had a gun. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 28.) Shortly after the call was placed, Officers Chavez and Lodwick arrived at an area near the house, and walked down the

[1] Kong Xiong and Luh Xiong are unrelated individuals. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 20.)

side of the house toward a window. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶¶ 30-32.) As the Officers were approaching the side of the house, they heard a semi-automatic pistol being readied to fire. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 34.) The Officers then walked along the side of the house, toward the rear window, and Kong Xiong came out of the house. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 35.) The Officers turned up their gun-mounted flashlights and yelled, "get your hands up." (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 37.) Immediately after turning on the flashlights, Kong Xiong turned his back to the Officers and began to run away towards the back of the property. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 40.) Within "a second or less" of yelling at Kong Xiong to get his hands up, and after he turned and ran about 6 to 8 feet from the Officers, the Officers fired multiple rounds at and into Kong Xiong, who immediately fell to the ground in pain. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶¶ 42, 45.) Individuals within the house and in the backyard of the house informed the Officers that there was a victim of their shooting in the backyard and another victim in the house. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 46.) Although the Officers knew there were two injured civilians and possibly a third, neither made an attempt for 10 minutes or more to render any assistance to any of the injured individuals. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 46.)

Within "moments" of the shooting, Sergeant Court, Officers Chavez and Lodwick's direct supervisor, arrived on the scene. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 47.) The Officers and Sergeant Court "took the position" that they could not render assistance to those individuals who had been shot until after the house had been cleared of all people. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 49.) Officers located a handgun near Kong Xiong, but left the gun lying near him, using the proximity of the gun as another excuse not to move Kong Xiong. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 52.) However, within 10 minutes, Sergeant Court and Officers Chavez and Lodgwick, along with other officers, moved Kong Xiong to a location where paramedics could begin to assist him. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 50.) Another individual who was shot in the backyard was not removed to a location where he could receive medical assistance for several more minutes and by the time he was taken to the paramedics, he was no longer breathing. (*Kong Xiong*, 1:13-cv-00083-SKO, Doc. 1, ¶ 51.)

Kong Xiong filed his complaint on January 17, 2013. He alleges claims for violation of the California Civil Code §§ 51.71 and 52.1, battery, assault, negligence, excessive force in violation of the Fourth Amendment, conspiracy pursuant to 42 U.S.C. § 1985, a *Monell* claim pursuant to Section 1983 (*see Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)), and a claim for injunctive relief.

2. *Luh Xiong v. City of Merced, et al*., Case No. 1:13-cv-00111-SKO

Luh Xiong alleges that he was in attendance at a party on December 3, 2011, at a residence located at 1594 Buckingham Court in Merced, California. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶¶ 1, 18.) Luh Xiong asserts that Officers Chavez and Lodwick responded to the residence to investigate reports that a person had a firearm at the party. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 18.) When the Officers approached the residence, purportedly recorded on a video camera contained in Officer Chavez' eyeglasses, they saw several people, readily identifiable as teenagers, standing in front of the residence. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 19.) As the Officers approached, they had their guns drawn, heard the sounds of a verbal argument, and shined their flashlights on Kong Xiong. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 20.) The Officers yelled for Kong Xiong to "get his hands up," the Officers' presence startled Kong Xiong, and he turned and ran away from the Officers. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 20.) The Officers then fired several bullets in the direction of the house. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 21.) The bullets "ripped through" the house's wooden fence, and struck Luh Xiong in his right thigh. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 21.) In total, three people were struck with bullets. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 21.) After he was shot, Luh Xiong ran into the house, collapsed, and lost consciousness. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 22.) He was awakened by the pain of being bitten on his arm by a Merced Police canine. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 22.) He was later transported to Mercy Hospital where he was treated for his gunshot wound and dog-bite injuries. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶ 22.)

Luh Xiong filed a complaint against Officers Chavez and Lodwick as well as the City of Merced on January 23, 2013. Luh Xiong alleges claims against Officers Chavez and Lodwick

under Section 1983 for unreasonable search and seizure and excessive force in violation of the Fourth Amendment (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶¶ 24-25), violation of Plaintiff's due process rights under the Fourteenth Amendment (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶¶ 24-25), and state-law claims for assault, battery, and negligence (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶¶ 40-46). Against the City of Merced, Luh Xiong alleges two Section 1983 claims, including a *Monell* claim. (*Luh Xiong*, 1:13-cv-00111-SKO, Doc. 2, ¶¶ 26-39.)

B. Procedural Background

On July 2, 2013, the parties in *Luh Xiong v. City of Merced, et al.,* 1:13-cv-00111-SKO, appeared for a scheduling conference before U.S. Magistrate Judge Boone. Defendants indicated they would file a notice that the *Luh Xiong* case was related to the *Kong Xiong* case; as a result, the scheduling conference was continued to July 23, 2013. On July 3, 2013, U.S. District Judge O'Neill issued an order relating *Kong Xiong v. City of Merced, et al.*, 1:13-cv-00083-SKO with *Luh Xiong v. City of Merced, et al.,*, 1:13-cv-00111-SKO, and both actions were assigned to District Judge O'Neill and U.S. Magistrate Judge Sheila K. Oberto. (Doc. 13.)[2]

A joint scheduling conference in both cases was held on August 8, 2013, before the undersigned. Defendants indicated they intended to file a motion to consolidate *Kong Xiong* and *Luh Xiong* actions, and the Court ordered that any motion for consolidation be filed no later than September 6, 2013, any opposition be filed no later than September 20, 2013, and any reply be filed no later than September 26, 2013. The Court also ordered the parties to serve initial disclosures by no later than September 13, 2013. No other scheduling deadlines were set, and the Court noted that a further scheduling conference would be set once the Court ruled on Defendants' motion to consolidate. (Doc. 20.)

On September 6, 2013, Defendants filed a motion to consolidate the *Kong Xiong* and the *Luh Xiong* actions. The motion was filed in both cases, and neither Plaintiff filed an opposition.

III. DISCUSSION

Federal Rule of Civil Procedure 42(a) provides that "[i]f actions before the court involve a common question of law or fact," the court may consolidate the actions. District courts have

[2] The parties in both cases have consented to the jurisdiction of the U.S. Magistrate Judge.

broad discretion to grant or deny consolidation. *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008); *see also In re Adams Apples, Inc.*, 829 F.2d 1484, 1487 (9th Cir. 1987). In considering whether to consolidate cases, the court "weighs the interest of judicial convenience against the potential for delay, confusion and prejudice caused by consolidation." *S.W. Marine Inc. v. Triple A Mach. Shop*, 720 F. Supp. 805, 807 (N.D. Cal. 1989).

A. Common Issues of Law and Fact

The threshold requirement for consolidation is the presence of a common question of fact or law. *Yousefi v. Lockheed Martin Corp.*, 70 F. Supp. 2d 1061, 1064-65 (C.D. Cal. 1999). Defendants assert that both cases arise out of Officers Chavez and Lodwick's discharge of their firearms on the evening of December 3, 2011, which resulted in injury to both Plaintiffs. Specifically, Kong Xiong alleges that one of the Officer's bullets struck his leg, and Luh Xiong alleges that a bullet struck him in the right thigh. Defendants contend that several of Plaintiffs' claims thus share common issues of law and fact such that consolidation of the two actions is appropriate, and the interests of the parties as well as the interest of judicial economy favor consolidation.

1. Plaintiffs' Claims for Excessive Force Share Common Issues of Fact and Law

The claims of each Plaintiff share several common issues of fact and law. Specifically, each Plaintiff alleges a Section 1983 claim under the Fourth Amendment, asserting that the Officers used excessive force in discharging their weapons on the evening of December 3, 2011. Defendants contend that the main use of force at issue is the Officers' discharge of their firearms at Kong Xiong, and the same facts will determine whether this force was reasonable as to both Plaintiffs under the reasonableness test set forth in *Graham v. Connor*, 490 U.S. 386, 395 (1989).

Under *Graham*, to determine whether the force used by a police officer was objectively reasonable, the nature and quality of the intrusion on the individual's Fourth Amendment interests are balanced against the countervailing governmental interests at stake. Thus, each Plaintiff's Fourth Amendment claim hinges on the reasonableness of the conduct of the Officers in discharging their weapons that resulted in gunshot injuries to both Plaintiffs. The factual and legal basis for making that determination is the same with regard to both claims. As Defendants

indicate, the governmental interest at stake is the same with respect to both Plaintiffs in that the severity of the crime involves Kong Xiong possibly brandishing a firearm at partygoers earlier in the evening, the Officers' hearing a gun slide rack moments before the incident, Kong Xiong's possession of a firearm, his reaction to police commands, and whether he turned toward officers to point his firearm at them. These facts are common to both claims, and the same legal analysis is applicable.

Further, as Defendants note, the Officers' defense of qualified immunity in each case turns on shared issues of common facts and law. The application of qualified immunity requires consideration of (1) whether an officer's conduct violated a constitutional right; and (2) if so, whether the right was clearly established in light of the specific context of the case. *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Robinson v. York*, 566 F.3d 817, 821 (9th Cir. 2009). Whether the Officers' conduct violated Plaintiffs' constitutional rights overlaps with Plaintiffs' excessive force claims, and, as discussed above, will necessarily involve the same factual and legal analysis. As to the second prong, the specific circumstances confronted by the Officers involve the same facts with respect to both Plaintiffs, particularly because the Officers' use of force did not differ between Plaintiffs. Thus, Defendants' defenses will share common issues of law and fact in relation to Plaintiffs' excessive force claims.

In sum, the Court finds that Plaintiffs' excessive force claims, as well as Defendants' defense of qualified immunity, share overlapping issues of fact and law.

2. Plaintiffs' *Monell* Claims Share Common Issues of Fact and Law

Both Plaintiffs assert a Section 1983 claim against the City of Merced pursuant to *Monell* for the failure to adequately train and supervise police officers in the use of deadly force. Although a city may not be held vicariously liable for the unconstitutional acts of its employees on the basis of an employer-employee relationship with the tortfeasor, it may be held liable under *Monell* when a municipal policy or custom causes an employee to violate another's constitutional right. *Monell*, 436 U.S. at 691-92.

The Ninth Circuit has held that municipal liability under *Monell* may be established in one of three ways: (1) "the plaintiff may prove that a city employee committed the alleged

constitutional violation pursuant to a formal governmental policy or a longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity;" (2) "the plaintiff may establish that the individual who committed the constitutional tort was an official with final policy-making authority and that the challenged action itself thus constituted an act of official governmental policy;" or (3) "the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it." *Gillette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir. 1992). A city may only be held liable under Section 1983 where its policy or custom is the "moving force behind the constitutional violation." *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

Defendants assert that whether a constitutional violation occurred as a result of the Officers' discharge of their weapons will encompass the same facts and applicable law. Specifically, the issues that will arise in determining *Monell* liability include the sufficiency of the Merced Police Department's use of force policy; whether both Plaintiffs can demonstrate the occurrence of a sufficient number of similar violations so as to infer a pattern or practice; the adequacy of the departments' training in use of force in light of the situations its officers commonly face; and the Department's process in hiring and supervising Officers Chavez and Lodwick. (Doc. 25-1, 7:6-16.)

Although both litigations are in an early stage, the Court agrees that, based upon the allegations of the two complaints, common issues of fact and law appear to predominate in both Plaintiffs' *Monell* claims, including those issues identified by Defendants.

3. Plaintiffs' State-Law Claims for Assault, Battery, and Negligence Share Common Issues of Fact and Law

Each Plaintiff alleges California state-law claims for assault, battery, and negligence. Defendants maintain that the reasonableness of the force used by the Officers underpins these claims. Therefore, the same factual and legal issues that govern the Officers' use of force under the Fourth Amendment will also govern Plaintiffs' claims for assault, battery, and negligence. (Doc. 25-1, 7:19-8:4.)

In a claim for assault and battery by a peace officer, under California law, a plaintiff must

prove that unreasonable force was used. Judicial Council of California, Civil Jury Instruction 1305; *see also Edson v. City of Anaheim*, 63 Cal. App. 4th 1269, 1272 (1998). Unreasonable force is conduct that is objectively unreasonable based on the facts and circumstances confronting the peace officer. *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 527 (2009). As such, Plaintiffs' claims for assault and battery flow from the same facts as Plaintiffs' Fourth Amendment excessive force claims and the applicable law is analogous. Because the conduct of the Officers and the reasonableness of their actions with respect to discharging their weapons will be central to Plaintiffs' assault and battery claims, those claims share common issues of fact and law in the same manner as Plaintiffs' excessive force claims discussed above.

Similarly, under California law, negligence is measured by the same standard as battery and excessive use of force under the Fourth Amendment. *Morales v. City of Delano*, 852 F. Supp. 2d 1253, 1278 (E.D. Cal. 2012) (citing *Abston v. City of Merced*, No. 1:09-cv-00511-OWW-DLB, 2011 WL 2118517, at * 16 (E.D. Cal. May 24, 2011)). As discussed, the Officers' conduct and the reasonableness of their actions arise from the same set of facts with regard to both Plaintiffs and will be analyzed under the same legal standard. Thus, Plaintiffs' negligence claims share common issues of fact and law.

4. Conclusion

Both Plaintiffs' claims for excessive force pursuant to Section 1983 arise out of the same use of force by the same Defendant Officers. As such, common issues of fact and law will predominate across both Plaintiffs' excessive force claims. Further, because the legal standard for excessive force overlaps with the standard for state-law claims for assault, battery, and negligence, all of the claims will share the same factual and legal predicate, i.e., the reasonableness of the Officers' discharge of their weapons. Finally, both Plaintiffs' *Monell* claims will require Plaintiffs to establish that the Officers' conduct was unreasonable and therefore unconstitutional. As such, each Plaintiff's claim for excessive force, *Monell* liability pursuant to Section 1983, and state-law claims for assault, battery, and negligence share common issues of fact and law. The threshold requirement for consolidation, therefore, is met. The Court next balances the interests of efficiency and fairness against the risks of prejudice and delay.

B. Considerations of Efficiency and Fairness

In determining whether consolidation is warranted, courts "weigh the interests of judicial convenience against the potential for delay, confusion and prejudice." *S.W. Marine, Inc.*, 720 F. Supp. at 807. Considerations of convenience and economy must yield to a paramount concern for a fair and impartial trial. *Johnson v. Celotex Corp*., 899 F.2d 1281, 1284 (2d Cir. 1990). The factors weighed include the risk of (1) prejudice and confusion; (2) inconsistent adjudications of common factual and legal issues; (3) burden on the parties, witnesses, and available judicial resources; and (4) delay and expense. *Id.*

1. There is Risk of Inconsistent Judgments Absent Consolidation

The Court agrees with Defendants that there is a risk of inconsistent judgments if the cases proceed with dispositive motions or trials in an uncoordinated manner. If one case proceeds to dispositive motion or trial more quickly, this may lead to inconsistent results that are not justified by the overlapping facts and applicable law involved in the cases. Additonally, because Plaintiffs are represented by different counsel, they may pursue different strategies that may result in different outcomes. To alleviate the risk of inconsistent judgments or any collateral estoppel effect of a dispositive decision in either case, consolidation of the cases is appropriate.

2. There is No Risk of Delay

Both actions were filed in January 2013, and they are in the same procedural posture, i.e., Defendants have answered the complaint filed in each case, the Court has set a deadline for the parties to make initial disclosures, and no other discovery has yet been opened. Thus, consolidation will not cause delay in either case. *See Antoninetti v. Chipotle Mexican Grill, Inc.*, Nos. 05-cv-1660-J (WMc), 06-cv-2671-J (WMc), 2007 WL 2669531, at *2 (S.D. Cal. Sept. 7, 2007) ("Federal courts have declined to consolidate cases involving common questions of law or fact where the cases were at different stages of preparedness for trial and where consolidation would delay the case ready of disposition." (quoting *Servants of the Paraclete, Inc. v. Great Am. Ins. Co.*, 886 F. Supp. 1560, 1572 (D.N.M. 1994))).

3. Risk of Prejudice or Confusion

Defendants contend that consolidation will not result in jury confusion or prejudice to any party; rather, consolidation will prevent prejudice to all parties in the form of potentially inconsistent rulings or the application of res judicata or collateral estoppel. Plaintiffs have not asserted that they will be prejudiced by consolidated litigation and trial. Although Plaintiff Kong Xiong states claims under the Unruh Act that are not alleged by Plaintiff Luh Xiong, at this stage it does not appear that there will be a substantial risk of jury confusion with respect to Kong Xiong's additional claims. Further, as it pertains to the claims of each Plaintiff, any risk of confusion can be ameliorated by properly structuring the presentation of trial evidence and instructing the jury. *See Dusky v. Bellasaire Invs.*, No. SACV 07-393-DOC, 2007 WL 4403985, at * 5 (C.D. Cal. 2007) (potential for jury confusion in consolidated matters can be alleviated by "properly structuring argument and instructing the jury"). Additionally, if a risk of unfairness or prejudice becomes apparent during the course of discovery on a more complete record, either party may seek to bifurcate issues that are not common to each case or request separate trials. Fed. R. Civ. P. 42(b).

4. Potential Burden on Parties, Witnesses, and Judicial Resources

Defendants contend that the same documentary evidence applies to both actions, and the same witnesses have knowledge of the events. Defendants maintain that consolidating the actions for all purposes, including trial, will significantly reduce the burden on the parties and the witnesses, while promoting judicial efficiency and economy. Neither Plaintiff takes issue with Defendants' assertions.

The Court finds that coordinated pretrial proceedings will allow the parties to propound and respond to fewer discovery requests and conduct fewer depositions, and permit the parties to coordinate their motions to eliminate unnecessary and duplicative arguments. This should preserve the parties' resources and result in less expense to both sides. For purposes of trial consolidation, based upon the allegations in the two complaints, it appears there will be significant overlap in terms of the evidence and witnesses. As Plaintiffs have not asserted how they will be prejudiced by a consolidated trial, trial consolidation is appropriate.

C. Conclusion

Defendants have met their burden of establishing that both cases involve common questions of law and fact, and consolidation is appropriate. Moreover, consolidation does not pose a significant risk of delay, jury confusion, or prejudice to either party. As such, Defendants' motion to consolidate is GRANTED. Upon consolidation, the higher numbered case (*Luh Xiong*, 1:13-cv-00111-SKO) will be closed and consolidated with the lower numbered case (*Kong Xiong*, 1:13-cv-00083-SKO).

D. A Further Scheduling Conference is Set for October 17, 2013, at 10:00 a.m.

A scheduling conference is set in these consolidated cases for October 17, 2013, at 10:00 a.m. in Courtroom 7. Telephonic appearances are approved and encouraged. The parties shall prepare and file a joint scheduling report that encompasses both actions on or before October 10, 2013. In their report, beyond the other required content, the parties shall address the logistical issue of filing any motions for summary judgment. As some of Plaintiffs' claims differ and Plaintiffs have separate counsel, Plaintiffs will be permitted to file separately or to oppose separately, any motion for summary judgment and Defendants will be permitted to file jointly against both Plaintiffs or oppose jointly against both Plaintiffs any motion for summary judgment.

The Court anticipates that if Plaintiffs' theories of the cases diverge, Defendants will be required to address Plaintiffs' motions or oppositions in separate sections of their brief. If this logistical procedure is implemented, the parties would be required to coordinate the timing of their motions and/or oppositions. Moreover, the parties would be required to meet and confer to create one joint statement of undisputed facts as a precursor to any summary judgment motion filed. The Court will entertain alternative suggestions of the parties and their counsel at the scheduling conference regarding the mechanics of filing any dispositive motions, and thus this issue should be addressed in the parties' joint scheduling report.

IV. CONCLUSION AND ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants' motion to consolidate is GRANTED;
2. The Clerk of Court is DIRECTED to consolidate these cases, closing case number

1:13-cv-00111-SKO:

3. All further filings with respect to either case shall be made in Case Number 1:13-cv-00083-SKO; and

4. A scheduling conference is set for October 17, 2013, at 10:00 a.m. in Courtroom 7.

IT IS SO ORDERED.

Dated: **October 1, 2013**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

fIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and **ELIZABETH HERRERA,**	§	
Plaintiffs.	§	
v.	§	
THE CITY OF AUSTIN, LUIS SERRATO, AND GABRIEL GUTIERREZ,	§	**Case Nos. 22-CV-655, 23-CV-9-RP**
Defendants.	§	
Hendler Flores Law, PLLC, Intervenor.	§	

HENDLER FLORES LAW, PLLC'S
MOTION FOR LEAVE TO INTERVENE AS OF RIGHT
AND BRIEF IN SUPPORT

Hendler Flores Law, PLLC (HFL or Intervenor), a professional limited liability company with its principal place of business in Travis County, Texas, files this Motion for Leave to Intervene as of Right and Brief in Support, in accordance with Federal Rule of Civil Procedure 24(a)(2).

A. INTRODUCTION

Plaintiffs, referred to as Respondents, are Alex Gonzales, Sr., Individually and as Next Friend to minor child Z.A.G., and Elizabeth Herrera (aka Elizabeth Gonzales) Individually and as Next Friend to minor child Z.A.G. Defendants are the City of Austin, Officer Luis Serrato, and Officer Gabriel Guttierez.

B. FACTS

On January 7, 2020, Respondents retained HFL as memorialized by a signed, written Attorney Retainer Agreement (Retainer Agreement) employing HFL to represent them in connection with the instant litigation. (Ex. A, Decl. of Scott M. Hendler, at ¶2).

The Retainer Agreement includes the basis for the charging of legal fees as a

contingent percentage of any monetary recovery in the litigation by settlement, judgment, or otherwise. It further provides that the plaintiffs agreed to an attorneys' fee of 40% of any settlement, verdict, or recovery obtained in the matter to compensate HFL for its legal services in the case. The Retainer agreement also set forth that HFL would recover the expenses it advanced on the Respondents' behalf from the Respondents' net amount of any monetary settlement, verdict, or recovery, after the deduction of the 40% attorney's fee.

The Retainer Agreement also provides that HFL has a lien and that if Respondents terminated HFL without cause, HFL would continue to have a claim for its full percentage contingent attorneys' fee of 40% of the gross recovery as well as its expenses incurred up to the time of termination. The Retainer Agreement states that if Respondents were to terminate HFL without cause and later obtain a recovery, the full percentage of the contingent fee would remain due, in addition to expenses incurred prior to the date of termination.

While representing Respondents, HFL investigated, researched, and filed two separate lawsuits on behalf of the Respondents; served and responded to written discovery; noticed and conducted depositions of two witnesses; ordered medical records; HFL facilitated a private autopsy; consulted experts and retained one expert on the subject of police excessive force; and reviewed thousands of pages of records and hours of video. (Ex. A at ¶8). HFL also incurred several significant expenses for Respondents' benefit, including assisting the family with ancillary matters including probate, memorials, grief support and management, and family law, among other services. *Id.* Those expenses are, at a minimum, $65,136.95. Respondents have not repaid these expenses. (Ex. A at ¶12).

On March 24, 2023, without any notice whatsoever, HFL received a letter from the Marconi Firm informing HFL that Respondents intended to discharge HFL effective April 7, 2023, and transfer their representation to Mr. Puckett and his new employer, the Devlin Law Firm LLC. Respondents discharge of HFL was without cause. (Ex. A at ¶11). HFL subsequently withdrew and transferred the file to the Devlin Law Firm on April 24, 2023,

and this Court granted HFL's motion to withdraw on May 2, 2023.

C. ARGUMENT AND AUTHORITIES

HFL has a right to intervene in accordance with FRCP 24(a)(2):

> **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
>
> . . .
>
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Fifth Circuit breaks down Rule 24(a) into four requirements. To be entitled to intervene as of right, HFL must demonstrate that it: (1) it timely applied; (2) it has an interest relating to the property or transaction that is the subject of the case; (3) disposition of the case may practically impair or impede its ability to protect its interest; and (4) it is inadequately represented by the existing parties. *Adam Joseph Res. v. CNA Metals Ltd.*, 919 F.3d 856, 865 (5th Cir. 2019).

Intervenor timely files this motion 35 days after the April 7, 2023 termination of its representation of Respondents and one day after this Court granted Intervenor's motion to withdraw from the matter in accordance with Respondents' request.

Intervenor's interest arises from a contingent fee contract with Intervenor Respondent signed providing for a fee equal to forty percent of any monetary recovery Respondents obtained in this litigation. In Texas, when a client employs an attorney on a contingent-fee basis and then discharges the attorney without cause before the attorney completes the representation, the attorney may sue to enforce the contract and recover the amount of the contracted compensation from any monetary damages that the client subsequently recovers. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 561 (Tex. 2006) (citing *Mandell & Wright v. Thomas*, 441 S.W.2d 841, 847 (Tex. 1969)). The ability of an attorney discharged without cause to recover for the services he rendered dates back at least as far as 1855. *Myers v.*

Crockett, 14 Tex. 257 (1855). Respondents discharged HFL without notice and without good cause.

Disposition of the case through a negotiated agreement will almost certainly involve payment of money damages to Respondents. In that event, it will become exponentially difficult if not impossible for Intervenor to recover its fee. This is because the funds could be put out of reach through a structed settlement—a type of annuity for personal injury plaintiffs only—that will pay Respondents over a long period of time; alternatively, Respondents, may spend the funds and deplete them before Intervenor can recover its interest, or Respondents may otherwise dispose of the funds before Intervenor could obtain its monetary interest through legal action.

Respondents have no incentive to protect HFL's interest in any monetary recovery they obtain in this matter because it will likely reduce their net recovery. That is because Respondents have hired replacement counsel who they purport to compensate through a percentage of any monetary recovery they obtain through the litigation. Similarly, none of the Defendants have any incentive to protect HFL's contingent fee interest. In fact, if the matter is resolved through a negotiated agreement either before or after a verdict, it is standard practice for a Defendant to require a Plaintiff (Respondents in this case) to assume all responsibility for any party claiming an interest in the settlement funds. As such, Defendants have no incentive to protect HFL's interests and Respondents interests now conflict with HFL's because payment of HFL's fee risks reducing Respondents recovery on top of the fee that Respondents have agreed to pay its replacement counsel.

The Fifth Circuit has repeatedly recognized that "a law firm that has been discharged by its client must be allowed to intervene as of right in a suit to protect its contingent fee interest in any recovery by its former client." *Adam Joseph Res.,* 919 F.3d at 866 (recognizing the holding of *Gaines v. Dixie Carriers, Inc.* 434 F.2d 52 (5th Cir. 1970)). In *Gaines v. Dixie Carriers, Inc.,* Mr. Gaines signed a contingent fee contract with a law firm and discharged the firm without cause after the firm "allegedly spent considerable time working on" his

claim. *Id.* at 53. While the litigation was pending, the firm filed a motion to intervene in the underlying action to protect its contingent fee interest in any potential recovery. Addressing the Rule 24(a) requirements for intervention as of right, the court held that the discharged firm claimed an interest in the action, the firm was so situated that the final disposition of the action may as a practical matter impair or impede the firm's ability to protect that interest, and neither of the existing parties was "concerned with protecting the appellant's interest." *Id.* at 54.

From *Gaines* forward, the Fifth Circuit has consistently held that a contingent attorney's fee suffices as an "interest relating to the property or transaction that is the subject of the action" and that a law firm discharged without cause after performing work for the client "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." *Adam Joseph Res.,* 919 F.3d at 866-67. *Gaines* and cases following it also recognize that after an attorney has been discharged without cause, the parties to the underlying case will not concern themselves with protecting the former attorney's interest. *Id.* at 868.

Here, under *Gaines* and its progeny, HFL has an interest in the property or transaction that is the subject matter of this action. HFL represented Respondents in this matter from January 7, 2020, to April 7, 2023, over three years. HFL earned its negotiated fee interest in the case. And Respondents should repay HFL's expenses per the terms of the Retainer Agreement, should they recover in the case that HFL brought for them.

In accordance with Rule 24(a) of the Federal Rules of Civil Procedure, Intervenor HFL moves for leave to intervene as of right as a party with an interest in the property or transaction made the subject of this action. Intervenor attaches as Exhibit B its proposed Plea in Intervention by Hendler Flores Law, LLP (Complaint) and seeks leave of Court to file the Complaint.

D. CONCLUSION

WHEREFORE, Intervenor HFL asks that the Court grant its Motion for Leave to Intervene, allow it to file its Plea in Intervention, and grant it such other and further relief to

which Intervenor may be entitled at law or in equity.

Dated: May 12, 2023

Respectfully submitted,

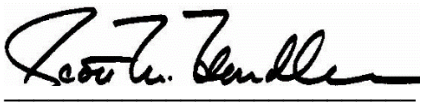
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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system on May 12, 2023.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and **ELIZABETH HERRERA**,	§	
Plaintiffs**.**	§	
v.	§	
CITY OF AUSTIN, LUIS SERRATO, and GABRIEL GUTIERREZ,	§	**Case Nos. 22-CV-655, 23-CV-9-RP**
Defendants.	§	
Hendler Flores Law, PLLC, **Intervenor.**	§	

DECLARATION OF SCOTT M. HENDLER

I, SCOTT M. HENDLER, do declare upon personal knowledge and under penalty of perjury in the State of Texas, that I am an attorney duly licensed to practice law in the State of Texas, and that the following is true and correct:

1. I am the Chief Executive Officer and firm principal of Hendler Flores Law, PLLC (HFL), with offices at 901 S. MoPac Expressway, Bldg. 1, Suite #300, Austin, Texas 78746.

2. On January 7, 2020, Alex Gonzales, Sr, and Elizabeth Herrera (aka Elizabeth Gonzales (collectively, Respondents), signed a written Attorney Retainer Agreement (Retainer Agreement) with HFL employing HFL to represent them and provide legal services in connection with the death of their son, Alex Gonzales, Jr.

3. The Retainer Agreement set forth the basis for the payment of legal fees as a contingent percentage of any recovery obtained in the litigation by settlement, judgment, or otherwise as follows, "I agree to pay [HFL] an attorneys' fee of 40% of any settlement, verdict, or recovery obtained in the matter for which [Respondents] retained [HFL] for their legal services performed during investigation, pretrial, and trial proceedings related to the claim[s] [for the death of their son, Alex Gonzales, Jr.]."

4. The Retainer agreement also provided that HFL would recover expenses as

follows, "I understand that attorneys' fees will be calculated based on the gross amount of settlement, verdict or recovery, and the expenses which have been advanced will be deducted from the net proceeds payable to the Client after deduction of the attorneys' fees."

5. The Retainer Agreement further granted HFL a lien:

In recognition of [HFL]'S interest in the proceeds of this legal matter, and to secure payment to [HFL] of all expenses, court costs, and attorney's fees Client is obligated to pay under this retainer agreement, Client hereby grants to [HFL] a charging lien immediately applicable to this matter and any and all recoveries on his/her claims or causes of action, whether by settlement, collection of a judgment, or otherwise. Client understands that this charging lien may be used to protect [HFL]'S fee and right to reasonable compensation for work done in the event Client discharges [HFL] without cause.

6. With respect to termination, the Retainer Agreement reads:

Should Client elect to terminate [HFL]'S representation without sufficient legal cause prior to the full conclusion of [HFL]'S services under this contract, Client understands and agrees that [HFL] has a claim for all expenses of litigation incurred up to that time and its full percentage contingent attorneys' fee of 40% of the recovery which will become due upon receipt by me or by any successor attorney of any proceeds for any remaining portion of my personal injury or wrongful death claim. In the event of such termination, **Client agrees that Texas law will apply to the rights of the parties to this agreement.** Texas law provides that unless [HFL] is terminated "for cause" as that term is understood under Texas law, [HFL] will retain its full contingent fee interest in this matter unless the parties agree otherwise.

7. While representing Respondents, HFL has investigated the facts surrounding the shooting death of Alex Gonzales, Jr.; HFL conducted legal research related to the law applicable to the death of Alex Gonzales, Jr.; HFL engaged probate counsel and advanced the costs of such counsel and his expenses to open probate for the estate of Alex Gonzales, Jr.; HFL filed two separate lawsuits on behalf of Respondents for damages from the death of Alex Gonzales, Jr.; HFL represented Respondents in family law proceedings regarding the welfare of their grandchild Z.A.G.; HFL drafted, served, and responded to written discovery to the City of Austin; HFL noticed and conducted three depositions of the officers involved in Alex Gonzales's shooting; HFL ordered, paid for , and obtained medical records; HFL paid for and facilitated a private autopsy of Alex Gonzales, Jr.,; HFL, consulted experts and retained one expert on the subject of the use of force by police and

police tactical conduct; and HFL assisted the family with ancillary matters including probate, memorials, grief support and management, and family law matters, and assisting with procuring reliable transportation for Elizabeth Herrera to attend work and school, among other services.

8. On March 24, 2023, HFL received a letter from Michael Marconi from the Marconi Firm—claiming to represent the Respondents. Mr. Marconi's letter stated that Respondents intended to terminate HFL's representation but requested that HFL's representation continue until April 7, 2023. The Marconi letter requested that HFL transfer the Gonzales case file to Mr. Puckett's new employer, the Devlin Law Firm LLC. A true and correct copy of the letter received on March 24, 2023, is attached hereto as Exhibit A. Respondents discharge of HFL was without cause under Texas law.

9. HFL continues to compile expenses incurred on Respondents' behalf during HFL's representation. HFL's records currently show that HFL has incurred $65,136.95, however, this amount could change HFL accountants identify additional expenses. Respondents have not repaid any of these expenses.

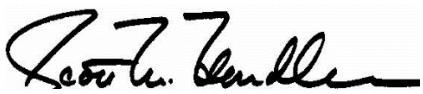
10. By this intervention, HFL seeks to protect its interest in its contingent fee from any recovery Respondents obtain up to and through final judgment in this matter, as well as its right to reimbursement for all advanced expenses on Respondents' behalf.

11. HFL has an interest in the property that is the subject matter of this action—namely money damages arising from the death of Alex Gonzales, Jr and the expenses HFL incurred on Respondents' behalf.

12. Because HFL no longer counsel of record in this matter, it cannot, as a practical matter, protect this interest without intervention. A settlement will ordinarily be in the form of money paid to Respondents and its replacement counsel of record. Neither will adequately protect HFL's interests without this Court's order that it do so.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 12, 2023, in Austin, Texas.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and ELIZABETH HERRERA, Plaintiffs. v. **CITY OF AUSTIN, LUIS SERRATO, AND GABRIEL GUTTIERREZ**, Defendants. Hendler Flores Law, PLLC, Intervenor.	§ § § § § § § § § § § § §	**Case Nos. 22-CV-655, 23-CV-9-RP**

PLEA IN INTERVENTION BY HENDLER FLORES LAW, PLLC

Hendler Flores Law, PLLC (HFL or Intervenor) files, pursuant to Federal Rule of Civil Procedure 24(a)(2), this Plea in Intervention complaining of Alex Gonzales, Sr., Individually and as Next Friend to minor child Z.A.G., and Elizabeth Herrera (aka Elizabeth Gonzales) Individually and as Next Friend to minor child Z.A.G. (collectively, Respondents), and for cause of action respectfully show the Court the following:

I.

PARTIES AND SERVICE OF PROCESS

1. Intervenor is a professional limited liability company with its principal place of business in Travis County, Texas.

2. Alex Gonzales, Sr. is a citizen of Texas and a resident of Bastrop County, Texas. Alex Gonzales, Sr. is the father and next of kin of Alex Gonzales, Jr. Alex Gonzales, Sr. may be served with process by serving counsel of record via the Court's CM/ECF system.

3. **Elizabeth Herrera** (aka Elizabeth Gonzales) is a citizen of Texas and a resident of Bastrop County, Texas. Elizabeth Herrera is the mother and next of kin of Alex Gonzales, Jr. Elizabeth Herrera may be served by serving her counsel of record via the Court's CM/ECF system.

4. Minor child **Z.A.G.** is a person under the age of eighteen (18) who is a citizen of Texas and, on information and belief, is a resident of Travis County, Texas. This action is brought on behalf of Z.A.G. by Alex Gonzales, Sr. and Elizabeth Herrera as "Next Friends." Z.A.G. may be served with process through service on counsel for Alex Gonzales, Sr. and Elizabeth Herrera as well as on counsel for **Z.A.G.'s** custodial parent's attorney, Jeff Edwards, The Edwards Law Firm, 603 West 17th Street, Austin, Texas 78701.

II.

FACTS

On January 7, 2020, Respondents signed a written Attorney Retainer Agreement (Retainer Agreement) employing HFL to provide legal services to them in connection with the above-referenced litigation. (Ex. A, Decl. of Scott M. Hendler, fully incorporated here by reference, at ¶2).

The Retainer Agreement includes the basis for the charging of legal fees as a contingent percentage of any monetary recovery in the litigation by settlement, judgment, or otherwise. It further provides that the plaintiffs agreed to an attorneys' fee of 40% of any settlement, verdict, or recovery obtained in the matter to compensate HFL for its legal services in the case. The Retainer agreement also set forth that HFL would recover the expenses it advanced on the Respondents' behalf from the Respondents' net amount of any

monetary settlement, verdict, or recovery, after the deduction of the 40% attorney's fee.

The Retainer Agreement also provides that HFL has a lien and that if Respondents terminated HFL without cause, HFL would continue to have a claim for its full percentage contingent attorneys' fee of 40% of the gross recovery as well as its expenses incurred up to the time of termination. The Retainer Agreement states that if Respondents were to terminate HFL without cause and later obtain a recovery, the full percentage of the contingent fee would remain due, in addition to expenses incurred prior to the date of termination.

While representing Respondents, HFL investigated, researched, and filed two separate lawsuits on behalf of the Respondents; served and responded to written discovery; noticed and conducted depositions of two witnesses; ordered medical records; HFL facilitated a private autopsy; consulted experts and retained one expert on the subject of police excessive force; and reviewed thousands of pages of records and hours of video. (Ex. A at ¶8). HFL also incurred several significant expenses for Respondents' benefit, including assisting the family with ancillary matters including probate, memorials, grief support and management, and family law, among other services. *Id.* Those expenses are, at a minimum, $65,136.95. Respondents have not repaid these expenses. (Ex. A at ¶12).

On March 24, 2023, without any notice whatsoever, HFL received a letter from the Marconi Firm informing HFL that Respondents intended to discharge HFL effective April 7, 2023, and transfer their representation to Mr. Puckett and his new employer, the Devlin Law Firm LLC. Respondents discharge of HFL was without cause. (Ex. A at ¶11). HFL subsequently withdrew and transferred the file to the Devlin Law Firm on April 24, 2023, and this Court

granted HFL's motion to withdraw on May 2, 2023.

III.

CLAIM

Intervenor has an interest in the property or transaction that is the subject matter of this action, in that it served as counsel for Respondents from January 7, 2020 to April 7, 2023, and is entitled to payment for its services. *See Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 561 (Tex. 2006) (citing *Mandell & Wright v. Thomas*, 441 S.W.2d 841, 847 (Tex. 1969)) (an attorney discharged without cause may recover for the services he rendered). Intervenor is similarly entitled to its contingent fee per the terms of the Retainer Agreement. Intervenor is so situated that disposition of this action in its absence may, as a practical matter, impair or impede its ability to protect that interest. Intervenor's interests are not adequately represented by the existing parties since Respondents have discharged Intervenor without cause and the underlying parties will not concern themselves with protecting Intervenor's interest. HFL is entitled to 40% of any judgment or settlement and reimbursement for expenses.

IV.

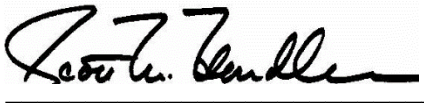
PRAYER

WHEREFORE, Intervenor requests citation and service be made as requested and that the Court award directly to Intervenor the expenses it has advanced and its share of any settlement to be paid by Defendants or judgment awarded against Defendants, in addition to such other and further relief to which Intervenor may be entitled at law or in equity.

Dated: May 12, 2023

Respectfully submitted,

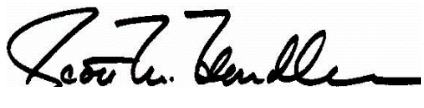
HENDLER FLORES LAW, PLLC



Scott M. Hendler - Texas Bar No. 9445500
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Bldg. 1, Suite #300
Austin, Texas 78746
Telephone: (512) 439-3200
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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system on May 12, 2023.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G.,	§	
Plaintiffs,	§	**Case No. 1:22-cv-00655-RP**
v.	§	**JURY TRIAL REQUESTED**
CITY OF AUSTIN,	§	
Defendant.	§	

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G.,	§	
Plaintiffs,	§	**Case No. 1:23-cv-00009-RP**
v.	§	**JURY TRIAL REQUESTED**
LUIS SERRATO, and **GABRIEL GUTIERREZ**,	§	
Defendants.	§	

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO CONSOLIDATE

Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera (collectively "Plaintiffs") file this Opposition to Defendants' joint motion to consolidate.[1] While Plaintiffs acknowledge that the similar factual issues ***may ultimately*** make this case amenable to consolidation for trial, (1) any such consolidation is premature at this time when no party has obtained testimony from the primary fact witnesses shedding light on the events in question; (2) Defendants' motion fails to address the procedural complications of consolidating these cases for ***pretrial*** purposes; and (3) the record developed to date may make it difficult to consolidate these cases for trial.

Defendants' motion puts the cart before the horse. Rather than asking the Court to make a speculative determination about the ultimate suitability of case consolidation for all purposes under Fed. R. Civ. P. 42(a)(2), the parties should instead meet and confer to develop a workable discovery plan to facilitate efficient pretrial discovery. At an appropriate time, after the facts have developed, the Court should consider whether to consolidate the actions in their entirety (under Fed. R. Civ. P. 42(a)(2)) or for hearing and trial (under Fed. R. Civ. P. 41(a)(1)).

Contrary to Defendants' representations, Plaintiffs are not opposed to consolidation; just the premature consolidation for all purposes Defendants seek. In fact, it was ***Plaintiffs*** who first broached consolidation with Defendants on March 29, raised the possibility again on a March 30 meet-and-confer call, and have since ***repeatedly*** sought to confer with Defendants (and Ms. Arellano) regarding consolidation for discovery. Plaintiffs proposed consolidation of these cases for ***pretrial discovery*** purposes if the parties can agree on the discovery limitations and discovery procedures that will apply. Plaintiffs agree with Defendants that "no consolidation at all" will squander party and judicial resources. But counsel for defendants have refused to even ***discuss***

[1] Defendants' joint motion ("Def. Mot.") with accompanying Exhibits 1-6 ("Def. Ex. [*n*]") was filed as Dkt. 36 in Case No. 1:22-cv-655-RP (the "-655 case"), Dkt. 13 in Case No. 1:23-cv-8-RP (the "-008 case"), and Dkt. 24 in Case No. 1:23-cv-9-RP (the "-009 case").

agreement on discovery limitations without a prior agreement on consolidation for trial. As discussed below, such a premature consolidation for trial raises more issues than it resolves.

I. BACKGROUND AND PROCEDURAL HISTORY

As alleged in the complaints for each of the three lawsuits, Alex Jr., Jessica, and baby Z.A.G. were riding together in Alex, Jr.'s vehicle when they first encountered APD Officer Gabrielle Gutierrez—an out-of-uniform and off-duty police officer driving a private car.[2] It appears largely undisputed that when Alex, Jr. pulled his car up next to Gutierrez's car, Gutierrez fired at least six gunshots into Alex's car in the space of two seconds, shooting Alex, Jr. at least once in the head and shooting Jessica at least three times in the arm, chest, and back.[3] No one ever returned fire at Gutierrez.[4] Gutierrez then placed a 911 call which resulted in additional on-duty APD officers, including Defendant Serrato, responding to the scene.[5] Rather than stopping to render aid to the injured and disoriented Alex, Jr. (who was checking on his infant son's welfare while keeping his hands visible and remaining upright with aid of his car), or aiding Ms. Arellano (who was on the ground crying for her baby), Serrato unjustifiably fired approximately 10 shots into an unarmed Alex, Jr., killing him.[6] All of this transpired while baby Z.A.G. was secured in a child safety seat located in the rear seat of Alex, Jr.'s car.[7]

Plaintiffs brought the -655 case on July 6, 2022.[8] The -655 case asserts a state law cause

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[2] *See* -655 case, Dkt. 26 at ¶¶11-12; -009 case, Dkt. 12 at ¶¶12-13; -008 case, Dkt. 1 at ¶¶10-13.
[3] *See* -655 case, Dkt. 26 at ¶13; -009 case, Dkt. 12 at ¶¶19, 24; -008 case, Dkt. 1 at ¶¶14-18. *See also*, Def. Ex. 1 at 0:24-25.
[4] *See* -655 case, Dkt. 26 at ¶¶14-16; -009 case, Dkt. 12 at ¶26; -008 case, Dkt. 1 at ¶¶26-27.
[5] *See* -655 case, Dkt. 26 at ¶¶17-26; -009 case, Dkt. 12 at ¶¶34-54; -008 case, Dkt. 1 at ¶¶32-48. *See also*, Def. Ex. 2.
[6] *See* -655 case, Dkt. 26 at ¶¶35-39; -009 case, Dkt. 12 at ¶¶71-74; -008 case, Dkt. 1 at ¶¶68-69. *See also*, Def. Ex. 3.
[7] *See* -655 case, Dkt. 26 at ¶11, ¶24, ¶33, ¶35; -009 case, Dkt. 12 at ¶12, ¶15, ¶22, ¶31, ¶34, ¶36, ¶66, ¶68, ¶¶71-71, ¶74; -008 case, Dkt. 1 at ¶10, ¶¶43-45, ¶57, ¶¶66-69.
[8] *See* -655 case, Dkt. 1.

of action for wrongful death ***against the City of Austin only*** under Texas Civil Practice and Remedies Code §§71.002(b), 71.004(b) and a federal cause of action under 42 U.S.C. §§1983, 1988 on behalf of Plaintiff Alex Gonzales, Sr. (in his individual capacity), Plaintiff Elizabeth Gonzales (in her individual capacity), and each as next friend and on behalf of baby Z.A.G.[9]

Plaintiffs brought the -009 case on January 3, 2023.[10] The -009 case asserts a state law cause of action for wrongful death ***against Luis Serrato and Gabriel Gutierrez only*** under Texas Civil Practice and Remedies Code §§71.002(b), 71.004(b) and a federal cause of action under 42 U.S.C. §§1983, 1988 on behalf of Plaintiff Alex Gonzales, Sr. (in his individual capacity), Plaintiff Elizabeth Gonzales (in her individual capacity), and each as next friend of Z.A.G.[11]

The -008 case was likewise filed on January 3, 2023.[12] The -008 case asserts two wholly distinct categories of claims: (1) a ***federal cause of action*** for excessive force under 42 U.S.C. § 1983 on behalf of Ms. Arellano ***against Gutierrez and the City of Austin only*** in her individual capacity, and (2) ***state wrongful death and federal causes of action*** against ***all three Defendants*** on behalf of Z.A.G.[13]

II. LEGAL STANDARD

"District courts enjoy substantial discretion in deciding whether and to what extent to consolidate cases."[14] "A motion to consolidate must meet the threshold requirement of involving

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[9] -655 case, Dkt. 26, ¶¶3-6.
[10] -009 case, Complaint, Dkt. 1.
[11] -655 case, Dkt. 26, ¶¶3-6.
[12] -008 case, Complaint, Dkt. 1.
[13] Though ambiguously worded, Ms. Arellano does not assert an individual claim against Serrato, who at least never shot ***her***. *See* -008 case, Dkt. 1, ¶¶ 127 (alleging Gutierrez "shot Jessica Arellano and Alex Gonzales, Jr. when they posed no danger to anyone"), 129 (alleging Serrato "shot Alex Gonzales, Jr. when he posed no danger to anyone"), 147(g) (seeking punitive damages against Gutierrez only for Mr. Arellano's claim), 148(d) (seeking punitive damages against Gutierrez and Serrato for Z.A.G.'s claim). *See also*, -009 case, Dkt. 17 at 4, fn. 15.
[14] *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018).

'a common question of law or fact. If that threshold requirement is met, then whether to grant the motion becomes an issue of judicial discretion."[15] In contrast, "[c]onsolidation is improper if it would prejudice the rights of the parties."[16]

III. ARGUMENT

Though Defendants have asked the Court to consolidate three separate causes of action involving different Plaintiffs and different (sub)sets of Defendants, they have provided the Court with no guidance on what that consolidation should look like. More, Defendants neglected to inform the Court of the full extent of discovery in the -655 case and the resulting issues that may prevent trying all claims against all parties in a single action. More, while Plaintiffs acknowledge that the claims asserted in the two cases arise from largely ***overlapping facts***, the ***distinct bases of recovery*** make full consolidation for trial a fraught enterprise.

A. The Plaintiffs' Claims and Ms. Arellano's Claims Arise Out of Distinct Facts and Distinct Legal Theories, Posing Minimal Risk of Inconsistent Outcomes

Defendants are simply incorrect to assert that the three cases at issue are the same lawsuit and differ only as to "stylistic presentation of the case" (Def. Mot. at 6). It is true that the same general series of events gives rise to the claims of (1) Alex Gonzales, Sr; Elizabeth Gonzales, and baby Z.A.G., on the one hand, and (2) the claims of Ms. Arellano, on the other hand. But the legal theories of recovery differ completely, and the key relevant facts for each set of claims is at least partially distinct. Consolidation of the three actions for trial is thus ***not necessary*** to avoid

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[15] *Matthews v. Exec. Office for the United States Attys.*, No. 1:20-CV-370-RP-SH, 2020 U.S. Dist. LEXIS 257013, at *4 (W.D. Tex. Sep. 20, 2020) (quoting *Pedigo v. Austin Rumba, Inc.*, No. A-08-CA-803-JRN, 2010 U.S. Dist. LEXIS 78631, 2010 WL 2730463, at *1 (W.D. Tex. June 24, 2010); *In re Settoon Towing LLC*, No. 07-1263, 2008 U.S. Dist. LEXIS 15683, 2008 WL 594556, at *1 (E.D. La. Feb. 28, 2008)).

[16] *St. Bernard Gen. Hosp., Inc. v. Hosp. Serv. Ass'n of New Orleans, Inc.*, 712 F.2d 978, 989 (5th Cir. 1983) (citing *Dupont v. Southern Pacific Co.*, 366 F.2d 193, 195-96 (5th Cir.1966), *cert. denied*, 386 U.S. 958, 87 S. Ct. 1027, 18 L. Ed. 2d 106 (1967)).

inconsistent adjudications of common factual and legal questions, ***nor is it sufficient*** to generate the efficiencies Defendants seek.

As outlined above, and detailed in Plaintiffs' Unopposed Motion for Appointment of a Guardian ad Litem, the claims of Plaintiffs (and Z.A.G.) are fundamentally ***wrongful death*** claims under ***Texas law***. All of these claims are ***derivative*** of the injury and death to Alex, Jr., and all of these claims factually relate to the actions of Defendants Gutierrez ***and*** Serrano.[17]

Ms. Arellano's ***individual*** claims contrast starkly with the claims of Plaintiffs. Ms. Arellano asserts a personal claim under § 1983 based on her own injuries, inflicted by Gutierrez. Ms. Arellano does not assert individual claims against Defendant Serrato because she was not shot by Serrato. Ms. Arellano does not have any individual claim arising from the death of Alex Gonzales, Jr. because she is not a wrongful death beneficiary. The chart below illustrates the causes of action alive in these three cases and where they are asserted.[18]

	Def. City of Austin	**Def. Gutierrez**	**Def. Serrato**
Alex Gonzales, Sr.	Alex, Jr. wrongful death claim under §1983, related to actions of both Gutierrez and Serrato (-655 case)	Alex. Jr. wrongful death claim under §1983 (-009 case)	Alex, Jr. wrongful death claim under §1983 (-009 case)
Elizabeth Herrera	Alex, Jr. wrongful death claim under §1983, related to actions of both Gutierrez and Serrato (-655 case)	Alex, Jr. wrongful death claim under §1983 (-009 case)	Alex, Jr. wrongful death claim under §1983 (-009 case)
Minor Child Z.A.G.	Alex, Jr. wrongful death claim under §1983, related to actions of both Gutierrez and Serrato (-655 case & -008 case)	Alex, Jr. wrongful death claim under §1983 (-009 case & -008 case)	Alex, Jr. wrongful death claim under §1983 (-009 case & -008 case)
Jessica Arellano	Personal claim under §1983, related to actions of Gutierrez only (-008 case)	Personal claim under §1983 (-008 case)	No claim

[17] Plaintiffs' Unopposed Motion for Appointment of a Guardian ad Litem ("GAL Mot.") is filed as Dkt. 30 in the -655 case and Dkt. 17 in the -009 case. *See* GAL Mot. at 1-2, 6-9.
[18] The Estate of Alex Gonzales, Jr. also likely has survival claims against all three parties, but on information and belief no person has yet been appointed Administrator of that Estate.

In other words, the ostensible similarity among these cases results from Z.A.G.'s claims being in the -008 case. If Z.A.G.'s claims are instead resolved in the -655 case and the -009 case, Defendants' complaint (and the need for consolidation) largely disappears. As Ms. Arellano's case involves only her personal claims based on the actions of Gutierrez alone, differing outcomes as between her claims and Plaintiffs' claims would not necessarily be ***inconsistent***.

B. Gutierrez's and Serrato's Depositions in the -655 Case Create a Potential Barrier to Joint Trial of the Actions.

As Defendants acknowledge, in the -655 case:

> Officer Gutierrez sat for a deposition on September 27, 2022. Officer Serrato sat for a deposition on November 1, 2022. Both Officers generally invoked their Fifth Amendment privilege and declined to answer questions touching and concerning this incident due to an ongoing criminal investigation by the Travis County District Attorney. Since that time, a Travis County Grand Jury "no-billed" both Officers in January 2023 for their conduct during this incident.

(Def. Mot. at 4.) But the decision by Gutierrez and Serrato to invoke the Fifth Amendment has significant consequences. For example, unless otherwise prohibited by the Federal Rules of Evidence, an invocation of the Fifth Amendment privilege regarding a relevant question (such as those Defendants characterize as "touching and concerning this incident") is admissible at trial.[19] Not only is such testimony presumptively admissible, but an adverse inference instruction is appropriate where a witness has refused to answer on Fifth Amendment grounds.[20]

In short, Plaintiffs in the -655 case are already armed with strong evidence against the

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[19] *See, e.g., Robert v. Maurice*, No. 18-11632, 2022 U.S. Dist. LEXIS 184768, at *34 (E.D. La. Mar. 11, 2022); *Hassan v. City of Shreveport*, No. 15-2820, 2018 U.S. Dist. LEXIS 102460, at *16 (W.D. La. June 18, 2018) (citing *FDIC v. Fid. & Deposit Co.*, 45 F.3d 969, 977 (5th Cir. 1995)); *Kadlec Med. Ctr. v. Lakeview Anesthesia Assocs.*, No. 04-0997, 2006 U.S. Dist. LEXIS 8723, at *17-19 (E.D. La. Mar. 6, 2006) (citing *Pyles v. Johnson*, 136 F.3d 986, 997 (5th Cir. 1998); *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 119 (5th Cir. 1990); *Baxter v. Palmigiano*, 425 U.S. 308, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976)).

[20] *See, e.g.*, *FDIC v. Fid. & Deposit Co.*, 45 F.3d 969, 977-79 (5th Cir. 1995); *Rad Servs., Inc. v. Aetna Cas. & Sur. Co.*, 808 F.2d 271, 272 (3d Cir. 1986).

City of Austin. Any consolidation that would preclude such evidence from being admitted at trial would therefore substantially prejudice Plaintiffs. And while the admissibility of Gutierrez's and Serrato's depositions in the -655 case against the City of Austin is well-settled, it is not yet established that its admissibility in ***other*** cases is quite as clear.

When deciding whether and how to consolidate cases, "the trial judge should be most cautious not to abuse his judicial discretion and to make sure that the rights of the parties are not prejudiced by the order of consolidation under the facts and circumstances of the particular case. Where prejudice to rights of the parties obviously results from the order of consolidation, the action of the trial judge has been held reversible error."[21]

C. Other Discovery in the -655 Case Creates Additional Issues a Consolidated Proceeding Will Have to Address.

While the admissibility at trial of the -655 case depositions of Gutierrez and Serrato is the ***clearest*** source of potential prejudice to Plaintiffs that can already be identified, it is far from the only source of prejudice to a party that can arise from consolidation of actions where major elements of discovery have taken place. For example, setting aside the ultimate ***admissibility*** of Gutierrez's and Serrato's deposition testimony invoking the Fifth Amendment, these individuals ***have already been deposed*** in the -655 case. If all three cases are consolidated, will these Defendants get another opportunity to offer testimony? If so, the potential to offset the negative effects of their prior testimony may be prejudicial to Plaintiffs. If not, will Ms. Arellano be precluded from taking their depositions? Depriving her of any opportunity to develop the facts of her case by deposing two key fact witnesses would certainly be prejudicial to her.

Additionally, Defendants' joint motion failed to mention that Plaintiffs in the -655 case have already answered all 25 interrogatories permitted by Fed. R. Civ. P. 33(a)(1) propounded by

[21] *Dupont v. S. Pac. Co.*, 366 F.2d 193, 196 (5th Cir. 1966) (collecting authority).

the City of Austin. Will Gutierrez and Serrato get additional interrogatories? Will any party be able to serve interrogatories on Ms. Arellano? Will Ms. Arellano and each of Plaintiffs be permitted to serve 25 individual interrogatories on each Defendant? How will baby Z.A.G. be treated for purposes of discovery? Similarly, there has already been a substantial production of documents in the -655 case. What happens to documents that have already been produced in that case? Are they immediately admissible in the other cases? Each of these questions, and many others, will need to be answered in order for "consolidation" of cases to create efficiencies. Two depositions, 25 interrogatory answers, and 42 weeks into a case is simply too late to push the reset button on discovery without risk of prejudice to at least one party.

D. The Court Should Instead Order the Parties to Meet and Confer

Notwithstanding the issues outlined above, Plaintiffs believe pretrial consolidation could conserve the parties' and Court's resources. But the "'consolidation' of which Rule 42 of the Federal Rules of Civil Procedure speaks is a very malleable concept."[22] Since the original 1813 consolidation statute, courts "understood consolidation . . . as enabling more efficient case management while preserving the distinct identities of the cases and the rights of the separate parties in them."[23] In the spirit of achieving the goals of consolidation without undue risk of prejudice, the Court should deny Defendants' motion and order the parties to confer on a consolidated discovery plan through pretrial proceedings that ***actually creates*** the efficiencies Defendants promise rather than creating uncertainty around whether and how the rights of Plaintiffs and Ms. Arellano will be preserved.

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[22] Joan Steinman, *The Effects of Case Consolidation on the Procedural Rights of Litigants: What They Are, What They Might Be Part I: Justiciability and Jurisdiction*, 42 UCLA L. Rev. 717, 724 (1995) (footnotes and citations omitted).
[23] *Hall v. Hall*, 138 S. Ct. 1118, 1125 (2018).

Dated: May 17, 2023

Respectfully Submitted,

/s/ Donald Puckett
Donald Puckett (Texas Bar No. 24013358)
Clifford Chad Henson (Texas Bar No. 24087711)
(*Application for admission forthcoming*)
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chenson@devlinlawfirm.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ *Donald Puckett*
Donald Puckett

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR. and ELIZABETH HERRERA, ***Plaintiffs***,	§	
v.	§	**Case No. 1:22-cv-00655-RP**
CITY OF AUSTIN, ***Defendant***.	§	

JESSICA ARELLANO, individually and as next friend of Z.A., minor child, and wrongful death beneficiary of Alex Gonzales, Jr., ***Plaintiffs***,	§	
v.	§	**Case No. 1:23-cv-8-RP**
THE CITY OF AUSTIN, GABRIEL GUTIERREZ, and LUIS SERRATO, ***Defendants***.	§	

ALEX GONZALES, SR., individually as a wrongful death beneficiary of Alex Gonzales, Jr., and as the Representative of the Estate of Alex Gonzales, Jr., Deceased, and ELIZABETH HERRERA, aka Elizabeth Gonzales, individually as a wrongful death beneficiary of Alex Gonzales, Jr., ***Plaintiffs***,	§	
v.	§	**Case No. 1:23-cv-9-RP**
LUIS SERRATO, GABRIEL GUTIERREZ, and THE CITY OF AUSTIN, ***Defendants***.	§	

DEFENDANTS' JOINT REPLY
IN SUPPORT OF CONSOLIDATION

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants, **Officer Luis Serrato**, **Officer Gabriel Gutierrez**, and the **City of Austin** file this Reply in Support of Consolidation pursuant to Federal Rule of Civil Procedure 42(a)(2) and would respectfully show the Court as follows:

I. ARGUMENTS & AUTHORITIES

A. The Gonzales Plaintiffs' opening arguments against Consolidation ask this Court to "wait and see" if they can develop facts that might save them from submitting to a consolidated trial. This is not the test, and other District Courts have disfavored this strategy.

1. Plaintiffs Gonzales, Sr. and Herrara's (collectively "the Opposed Plaintiffs") response in opposition to these Defendants' Joint Motion to Consolidate accuses the Defense of "putting the cart before the horse."[1] In the opening of their motion, they argue that it is "premature" for the Defense to seek complete consolidation and that this Court should revisit this issue "after the facts have developed."[2] Meantime, the Opposed Plaintiffs would like this Court to Order the Defense to submit to additional conferencing.[3]

2. Translation: the Opposed Plaintiffs cannot articulate meritorious objections to consolidation *based on the underlying facts* at the moment, and instead would like time and more discovery to craft those objections. This is not the standard, and the Defense foresaw this argument in its motion. As previously argued, other Courts have specifically rebuked plaintiffs for attempting this "wait and see" strategy.[4] Tellingly, the Opposed Plaintiffs' motion basically

[1] Pls. Resp. to Joint Mot. to Consolidate, pg. 1, Dkt. # 28 (1:23-cv-0009-RP), Dkt. # 39 (1:22-cv-00655-RP).
[2] *Id*.
[3] *Id*.
[4] *Simon v. Muschell*, No. 1:09-CV-301-JTM, 2010 WL 3946528, at *2 (N.D. Ind. Oct. 4, 2010) (noting with disapproval the plaintiffs' argument that they would "consent to consolidating the cases for discovery but argue[d] that it [was] too early to consolidate the case for all purposes.").

abandons this line of argument, because they never actually articulate *what* facts need to be developed in order to support their nebulous future objections to consolidating these cases for trial.[5]

3. Instead, Plaintiffs switch tactics halfway through their motion and instead spend their ink arguing that these cases should not be consolidated because: (1) the Gonzales Plaintiffs rightfully represent Z.A.'s interests in their lawsuits—655 and 009—and (2) that they will be prejudiced if they have to relinquish the advantage that they gained when Officers Serrato and Gutierrez invoked the Fifth Amendment at their depositions in cause 655 before a Travis County Grand Jury "no-billed" these defendant officers. Both of these arguments are meritless, and actually weigh in favor of consolidation under the relevant factors.[6]

B. Under Texas law, Plaintiff Arellano—as Z.A.'s mother—is the proper Plaintiff to act as Z.A.G.'s Next Friend. The Opposed Plaintiffs concede that all the Wrongful Death beneficiaries need to be in one lawsuit, but their arguments in opposition improperly attempt to strip Next Friend status from Arellano under Texas law.

4. The Opposed Plaintiffs' first substantive argument against consolidation posits—via a chart—that Plaintiff Arellano's lawsuit (008) does not actually completely overlap with their lawsuits. They arrive at this conclusion by noting that Arellano's individual cause of action only properly gives rise to claims against the City of Austin and Officer Gutierrez, as Arellano appears to concede that Officer Serrato never used force against her personally.[7]

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[5] Pls. Resp. to Joint Mot. to Consolidate, pgs. 4 – 8, Dkt. # 28 (1:23-cv-0009-RP), Dkt. # 39 (1:22-cv-00655-RP) (the Argument of Plaintiffs' response motion never articulates what facts need further development).

[6] *Samataro v. Keller Williams Realty, Inc,* No. 1:18-CV-775-RP, 2021 WL 3596303, at *2 (W.D. Tex. Apr. 27, 2021).

[7] This concession is extrapolated by Plaintiff Arellano only seeking punitive damages from Defendant Gutierrez. *See* Pl. Orig. Compl, ¶ **147**, Dkt. # 1 (1:23-cv-00008-RP).

5. Yet Plaintiff Arellano is also *clearly* bringing a lawsuit identical to the Opposed Plaintiffs' in her capacity as "Next Friend" of her minor child Z.A.[8] In fact, the Opposed Plaintiffs' response opposing consolidation seems to recognize *sub silentio* that Z.A.'s claims are identical to their own.[9] However, the Response argues that ***their lawsuits*** are the proper vehicles to resolve Z.A.'s claims against these Defendants, therefore making the need for consolidation "largely disappear[].":[10]

6. To effectuate this litigation strategy the Opposed Plaintiffs replead both of their lawsuits to allege that ***they*** are actually the "Next Friends" of Z.A.[11] They additionally filed a Motion to Appoint a *Guardian Ad Litem* for baby Z.A. in those lawsuits.[12] Puzzlingly, the Opposed Plaintiffs initially conceded in their motion to appoint an *ad litem* that the Texas "one action" rule would require these three cases to be consolidated.[13] But the motion to appoint an *ad litem* subsequently embarks on a rather confusing argument that seems to claim that Arellano's alleged conflicts with Z.A. leaves Z.A. effectively "unrepresented".[14] Beyond being confusing, this argument is simply wrong, and conflates what "Next Friend" status is with what a *guardian ad litem* is and what the *ad litem*'s function is meant to achieve.[15]

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[8] Pl. Orig. Compl, ¶ **148**, Dkt. # 1 (1:23-cv-00008-RP).
[9] Pls. Resp. to Joint Mot. to Consolidate, **pg. 5**, Dkt. # 28 (1:23-cv-0009-RP), Dkt. # 39 (1:22-cv-00655-RP).
[10] Pls. Resp. to Joint Mot. to Consolidate, **pg. 6**, Dkt. # 28 (1:23-cv-0009-RP), Dkt. # 39 (1:22-cv-00655-RP).
[11] Pls. 1st Am. Compl., Dkt. # 12 (1:23-cv-0009-RP) (filed March 30, 2023); *see also* Pls. 1st Am. Compl. Dkt. # 26 (1:22-cv-00655-RP) (filed April 4, 2023).
[12] Pl. Mot. to Appoint *Ad Litem*, Dkt. # 17 (1:23-cv-00009-RP).
[13] *Id*. at pg. 10 (claiming "the requirements of the Texas one action rule likely will require some consolidation of the various wrongful death claims asserted in the -0008, the -009 and the -655 cases.").
[14] *Id*. (claiming "For purposes of Rule 17(c), Z.A.G. would still be unrepresented in a consolidated case…").
[15] *In re KC Greenhouse Patio Apartment, LP*, 445 S.W.3d 168, 172 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

7. Under Texas Family Code § 151.001(a)(7), Plaintiff Arellano—***as Z.A.'s parent***—has "the right to represent [Z.A.] in legal actions and to make other decisions of substantial legal significance concerning [Z.A.]."[16] As a Next Friend, Arellano is present in the -008 suit for Z.A.'s claims in a representative capacity only, but Z.A. remains the real party in interest.[17] In Texas, a "child's sole surviving parent can bring suit on the child's behalf, even though no court order appoints the parent as the sole managing conservator."[18] "This exclusive power granted to parents may not be exercised by a third party absent an appropriate court order."[19]

8. Additionally, the presence of a conflict of interest does not strip a parent of the right to be their child's "Next Friend." As explored at length in *In re KC Greenhouse*, "the rule that grants a [Texas] trial court authority to address conflicts of interests" allows the Court to do so "through the appointment of a guardian ad litem, ***not the replacement of the next friend***."[20] Thus, the Opposed Plaintiffs' arguments must fail to the extent that they are attempting to avoid Consolidation by supplanting Arellano as Z.A.'s Next Friends.

9. Z.A. is not "unrepresented" due to the potential existence of a conflict with Arellano.[21] Generally, in Texas "the guardian ad litem's role is to participate in attempts to settle the case and to advise the court on whether any agreed settlement is in the minor's best interest."[22] If a settlement or a verdict awarding damages is reached in this case, this Court might find it appropriate to appoint a guardian ad litem to ensure that Z.A. is given appropriate compensation.

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[16] *Id*. (citing TEX. FAM. CODE ANN. § 151.001(a)(7)).
[17] *Id*. (citing *Byrd v. Woodruff*, 891 S.W.2d 689, 704 (Tex. App.—Dallas 1994, writ dism'd by agr.).
[18] *Id*. at 173 (cleaned up) (citing *In re Collins*, 242 S.W.3d 837, 847 (Tex. App.—Houston [14th Dist.] 2007, orig. proceeding).
[19] *Id.* (referencing *Munoz v. II Jaz Inc.*, 863 S.W.2d 207, 209 (Tex. App.—Houston [14th Dist.] 1993, no writ)).
[20] *Id*. at 172. (emphasis added) (citing *King v. Payne*, Tex. 105, 121 (1956)).
[21] *Id*.
[22] *Id*. (citing TEX. R. CIV. P. 172.4(c)).

Until that time, the Opposed Plaintiffs cannot meritoriously argue that Consolidation is inappropriate because Z.A.'s claims can be "resolved in the -655 case and the -009 case"[23] as they are not Z.A.'s Next Friends by right. Since they admit Z.A.'s claims are identical to their own, consolidation with Z.A.'s Next Friend—Plaintiff Arellano—is eminently appropriate under the relevant factors.

C. The Opposed Plaintiffs' desire to keep these cases separate so they can cling to a Fifth Amendment advantage over the City of Austin is not meritorious under *Davis-Lynch* to preclude consolidation, and this discovery disparity between the cases vastly increases the likelihood of inconsistent adjudications.

10. The Opposed Plaintiffs' second substantive argument in opposition to consolidation is easier to understand. Namely, they would like to keep the tactical advantage they gained when they induced Officer Serrato and Gutierrez to invoke their Fifth Amendment privilege at their non-party depositions in cause -655.[24] Both officers invoked the privilege due to an ongoing investigation by the Travis County District Attorney. Since that time, a Travis County Grand Jury "no-billed" both officers.[25] These officers thus no longer face a potential criminal indictment, and they are likely free to testify fully and openly in their defense of civil liability.

11. Yet the Opposed Plaintiffs claim that they will be prejudiced if this Court consolidates these cases and strips them of their "strong [Fifth Amendment] evidence against the City of Austin."[26] The Opposed Plaintiffs' claims of prejudiced are not well supported in the case law. Under the Fifth Circuit's guidance in *Davis-Lynch* this Court likely would afford Officers

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[23] Pls. Resp. to Joint Mot. to Consolidate, **pg. 6**, Dkt. # 28 (1:23-cv-0009-RP), Dkt. # 39 (1:22-cv-00655-RP).
[24] *Id*.
[25] *No indictments for APD officers in fatal January 2021 shooting of Alex Gonzales*, KVUE (Dec. 27, 2022 6:41 PM), https://www.kvue.com/article/news/local/apd-no-indictments-alex-gonzales-shooting/269-f5017d15-68e7-4638-bc54-93098d6329a7.
[26] Pls. Resp. to Joint Mot. to Consolidate, **pg. 7**, Dkt. # 28 (1:23-cv-0009-RP), Dkt. # 39 (1:22-cv-00655-RP) (claiming "the potential to offset the negative effects of their prior testimony may be prejudicial to Plaintiffs").

Serrato and Gutierrez the opportunity to withdraw their prior Fifth Amendment invocations in cause -655—***even if these cases were not consolidated***.[27]

12. In *Davis-Lynch* the Fifth Circuit held that a District Court abused its discretion when it denied a defendant's attempt to withdraw his assertion of his Fifth Amendment privilege in a civil action.[28] In so holding, the Fifth Circuit explained that the Supreme Court has cautioned that "the Constitution limits the imposition of any sanction which makes assertion of the Fifth Amendment privilege 'costly'".[29] Accordingly the *Davis-Lynch* court held that:

> "The Court should be especially inclined to permit withdrawal of the privilege if there are no grounds for believing that opposing parties suffered undue prejudice from the litigant's later-regretted decision to invoke the Fifth Amendment…The timing and circumstances under which a litigant withdraws the privilege are relevant factors in considering whether a litigant is attempting to abuse or gain some unfair advantage.

At bottom, the *Davis-Lynch* court held that a party should be able to withdraw their invocation of the Fifth Amendment privilege—even at a late stage in litigation—if the circumstances "indicate that (1) the litigant was not using the privilege in a tactical, abusive manner, and (2) the opposing party would not experience undue prejudice as a result."[30]

13. Here, the undersigned submit that there is no evidence that the officers have abused their Fifth Amendment privileges as they awaited the Grand Jury's decision. Furthermore, as the Opposed Plaintiffs all but concede, they will have to take Officers Serrato and Gutierrez's depositions again in their second lawsuit—cause number 009—because the first deposition is

[27] *Davis-Lynch, Inc. v. Moreno*, 667 F.3d 539, 546 (5th Cir. 2012).
[28] *Id*. (noting "the district court accordingly erred in denying Moreno's attempt to withdraw his assertion of the privilege more than a month before the discovery deadline.").
[29] *Id*. (citing *Spevack v. Klein*, 385 U.S. 511, 515 (1967)).
[30] *Id*. (citing *S.E.C. v. Graystone Nash, Inc.*, 25 F.3d 187, 193 (3d Cir. 1994)).

likely not admissible at trial against those officers in a case with different parties under Rule 32(a)(8).[31]

14. Finally, the Opposed Plaintiffs desire to keep the Fifth Amendment discovery advantage they obtained in cause number 655 ironically reveals how likely it is that there will be inconsistent adjudications of common factual or legal questions if these cases are tried separately. Essentially, if case number 655 proceeded unconsolidated, there is a chance that the City of Austin might have faced *Monell* liability upon a finding of an underlying constitutional violation ***solely*** because a jury was permitted to take an adverse inference based on Officer Serrato and Gutierrez's now unnecessary invocation of their Fifth Amendment privileges.[32]

15. Conversely, a subsequent jury in cause number 009 might find that Officer Serrato and Gutierrez committed no constitutional violation based on their open and unfettered testimony. This would ***necessarily*** be an inconsistent adjudication—exactly the type of undesirable event that Consolidation under Rule 42(a)(2) is designed to prevent. Accordingly, the Opposed Plaintiffs' claims of Discovery prejudice are meritless, and actually weigh in favor of consolidation.

D. There is no need for the Court to Order additional conferencing before granting this Joint Motion to Consolidate.

16. The undersigned respectfully submit that the Opposed Plaintiffs' desire for additional Court ordered conferencing is not needed. Contrary to the Opposed Plaintiffs' litany of

[31] The individual officers were never parties to cause number -655; *see* FED. R. CIV. P. 32 (a)(8) (noting a deposition taken in an earlier action may only be used in another action if that deposition involves (1) the same subject matter and (2) is between the same parties or their representatives.).

[32] *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (if a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force [the *Monell claim*] is quite beside the point.") (emphasis original).

hypotheticals, consolidating these cases for the purposes of pretrial discovery should be simple. As stated in the Prayer of the Original Motion, the Joint Defendants believe that the agreed proposed scheduling orders recently submitted in cause numbers -008 and -009 can provide the appropriate framework for the new litigation deadlines in a singular consolidated case.

17. As to the discovery that was exchanged between the Opposed Plaintiffs and the City of Austin in cause number -655—this Court should simply order that Discovery must be reproduced to all Defendants and all Plaintiffs in the newly consolidated case, and that Officers Serrato and Gutierrez may be deposed again. Absent that, the undersigned do not contemplate any other necessary deviations from the standard Rules that normally govern multi-party litigation.

II. PRAYER

18. WHEREFORE PREMISES CONSIDERED, **Defendant Gutierrez**, **Defendant Serrato**, and **Defendant City of Austin** respectfully request that this Court GRANT this Joint Motion to Consolidate, and for all other relief to which these Joint Defendants may be justly entitled in law or equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 2023, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Stephen B. Barron
Stephen B. Barron

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and **ELIZABETH HERRERA,**	§	
Plaintiffs.	§	
v.	§	
THE CITY OF AUSTIN, LUIS SERRATO, AND GABRIEL GUTIERREZ,	§	**Case Nos. 22-CV-655, 23-CV-9-RP**
Defendants.	§	
Hendler Flores Law, PLLC, Intervenor.	§	

HENDLER FLORES LAW, PLLC'S
FIRST AMENDED MOTION FOR LEAVE TO INTERVENE AS OF RIGHT
AND BRIEF IN SUPPORT

Hendler Flores Law, PLLC (HFL or Intervenor), a professional limited liability company with its principal place of business in Travis County, Texas, files this First Amended Motion for Leave to Intervene as of Right and Brief in Support, in accordance with Federal Rule of Civil Procedure 24(a)(2).

A. INTRODUCTION

Plaintiffs in this matter are referred to as Respondents, and are Alex Gonzales, Sr., Individually and as Next Friend to minor child Z.A.G., and Elizabeth Herrera (aka Elizabeth Gonzales) Individually and as Next Friend to minor child Z.A.G. Defendants are the City of Austin, Officer Luis Serrato, and Officer Gabriel Gutiérrez. Intervenor files this amended motion for leave to intervene to clarify the basis of its lien in light of correspondence received from Respondents' Counsel demanding withdrawal of the Motion to Intervene on the ground that the motion violates FRCP 11.

B. FACTS

On January 7, 2020, Respondents retained HFL as memorialized by a signed, written Attorney Retainer Agreement (Retainer Agreement) employing HFL to represent them in connection with the instant litigation. (Ex. A, Decl. of Scott M. Hendler, at ¶2).

The Retainer Agreement states the basis for the charging of legal fees as a contingent percentage of any monetary recovery in the litigation by settlement, judgment, or otherwise. (*Id.* ¶3). It provides that the plaintiffs agreed to pay a contingent attorneys' fee of 40% of any settlement, verdict, or recovery obtained in the matter to compensate HFL for its legal services in the case. (*Id.*). The Retainer Agreement also set forth that HFL would recover the expenses it advanced on the Respondents' behalf from the Respondents' net amount of any monetary settlement, verdict, or recovery, after the deduction of the 40% attorney's fee. (*Id.* ¶4).

The Retainer Agreement also provides, and the Respondents agreed, that HFL has a charging lien to secure recovery of its fees and expenses in the matter, and that if Respondents terminated HFL without cause, HFL would continue to have a claim for its full percentage contingent attorneys' fee of 40% of the gross recovery, including its expenses incurred up to the time of termination. (*Id.* ¶5.) The Retainer Agreement states that if Respondents were to terminate HFL without cause and later obtain a recovery, the full percentage of the contingent fee would remain due, in addition to expenses incurred prior to the date of termination from that recovery. (*Id.* ¶6.)

While representing Respondents, HFL investigated, researched, and filed two separate lawsuits on behalf of the Respondents; served and responded to written discovery; noticed and conducted depositions of two witnesses; ordered medical records; HFL facilitated a private autopsy; consulted experts and retained one expert on the subject of police excessive force; and reviewed thousands of pages of records and hours of video. (*Id.* ¶7.). HFL also incurred several significant expenses for Respondents' benefit, including assisting the family with ancillary matters including probate, memorials, grief support and management, and family law, among other

services. *Id.* Those expenses are, at a minimum, $65,136.95. Respondents have not repaid these expenses. (*Id.* ¶9.).

On March 24, 2023, without any notice whatsoever, HFL received a letter from the Marconi Firm informing HFL that Respondents intended to discharge HFL effective April 7, 2023, and transfer their representation to Mr. Puckett and his new employer, the Devlin Law Firm LLC. Respondents discharge of HFL was without cause. (*Id.* ¶8.). HFL subsequently withdrew and transferred the file to the Devlin Law Firm on April 24, 2023, and this Court granted HFL's motion to withdraw on May 2, 2023. (*Id.*).

On May 23, 2022, HFL received correspondence from Respondents' counsel, demanding that HFL withdraw its Motion for Leave to Intervene, accusing HFL of violating FRCP 11 and Texas Disciplinary Rule 1.08(h), and threatening to file a FRCP 11 Motion for Sanctions against HFL. (*Id.* ¶13.).

C. ARGUMENT AND AUTHORITIES

HFL has a right to intervene in accordance with FRCP 24(a)(2):

> **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
> . . .
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Fifth Circuit breaks down Rule 24(a) into four requirements. To be entitled to intervene as of right, HFL must demonstrate that it: (1) it timely applied; (2) it has an interest relating to the property or transaction that is the subject of the case; (3) disposition of the case may practically impair or impede its ability to protect its interest; and (4) it is inadequately represented by the existing parties. *Adam Joseph Res. v. CNA Metals Ltd.*, 919 F.3d 856, 865 (5th Cir. 2019).

Intervenor timely filed its initial motion for leave to intervene 35 days after the April 7,

2023, termination of its representation of Respondents and one day after this Court granted Intervenor's motion to withdraw from the matter in accordance with Respondents' request. *See* Dkt. 27.

Intervenor's interest in any monetary recovery arises from a written contingent fee contract with Intervenor that Respondents signed, entitling Intervenor to a fee equal to forty percent of any monetary recovery Respondents obtains in this litigation. (Ex. A, ¶¶3-5.) An attorney's right to assert a lien against client property to ensure payment of professional fees has been recognized at common-law since the early eighteenth century. *See, e.g.*, *Everett, Clarke & Benedict v. Alpha Portland Cement Co.*, 225 F. 931, 935 (2d Cir. 1915) (summarizing history of attorney liens); *see also United States v. Betancourt*, 2005 WL 3348908, at *3 (S.D. Tex. Dec. 8, 2005) ("Under Texas law, a contract may establish an attorney's lien for money received in judgment or settlement of a matter." (citing *Thomson v. Findlater Hardware Co.*, 205 S.W.3d 831, 832 (Tex. 1918))). The charging lien that Respondents contractually agreed to in the Retainer Agreement they signed retaining Intervenor applies to the proceeds of a recovery (it does not purport to create a security interest in the underlying case). The contractually agreed to charging lien protects the attorney's fees and expenses from the proceeds of any judgment, decree or other order entered in the former client's favor in the proceeding at issue.

Texas common law establishes charging liens as a way for attorneys to secure recovery of their fees and expenses. *See, e.g.*, *Rotella v. Cutting*, No. 02-10- 00028-CV, 2011 WL 3836456, at *5 (Tex. App.—Fort Worth Aug. 31, 2011, no pet.); *Tarrant Cty. Hosp. Dist. v. Jones*, 664 S.W.2d 191, 196 (Tex. App.—Fort Worth 1984, no pet.). In Texas, when a client employs an attorney on a contingent-fee basis and then discharges the attorney without cause before the attorney completes the representation, the attorney may sue to enforce the contract and recover the amount of the contracted compensation from any monetary damages that the client subsequently recovers. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 561 (Tex. 2006) (citing *Mandell & Wright v.*

Thomas, 441 S.W.2d 841, 847 (Tex. 1969)). The ability of an attorney discharged without cause to recover for the services he rendered dates back at least as far as 1855. *Myers v. Crockett*, 14 Tex. 257 (1855). Respondents discharged HFL without notice and without good cause.

Disposition of the case through a negotiated agreement will almost certainly involve payment of a money recovery to Respondents. In that event, it will become exponentially difficult if not impossible for Intervenor to recover its fee. This is because the funds could be put out of reach through a structed settlement—a type of annuity for personal injury plaintiffs only—that will pay Respondents over a long period of time; alternatively, Respondents may spend the funds and deplete them before Intervenor can recover its fees and expenses from the recovery, or Respondents may otherwise dispose of the funds before Intervenor could obtain its monetary interest through legal action.

Respondents have no incentive to protect HFL's interest in any monetary recovery they obtain in this matter because it will likely reduce their net recovery. That is because Respondents have hired replacement counsel who they purport to compensate through a percentage of any monetary recovery they obtain through the litigation. Similarly, none of the Defendants have any incentive to protect HFL's contingent fee interest in the recovery. In fact, if the matter is resolved through a negotiated agreement either before or after a verdict, it is standard practice for a Defendant to require a plaintiff (Respondents in this case) to assume all responsibility for any party claiming an interest in the settlement funds. As such, Defendants have no incentive to protect HFL's interests in the recovery, and Respondents' interests now conflict with HFL's because payment of HFL's fee risks reducing Respondents' recovery on top of the fee that Respondents have agreed to pay its replacement counsel.

The Fifth Circuit has repeatedly recognized that "a law firm that ha[s] been discharged by its client must be allowed to intervene as of right in a suit to protect its contingent fee interest in any recovery by its former client." *Adam Joseph Res.*, 919 F.3d at 866 (citing *Gaines v. Dixie*

Carriers, Inc., 434 F.2d 52 (5th Cir. 1970)). In *Gaines v. Dixie Carriers, Inc.*, plaintiff signed a contingent fee contract with a law firm whom he later discharged without cause after the firm "spent considerable time working on" his claim. *Id.* at 53. While the underlying litigation was still pending, the law firm filed a motion to intervene to protect its contingent fee interest in any potential recovery. Addressing the Rule 24(a) requirements for intervention as of right, the court held that the discharged firm claimed an interest in the action, the firm was so situated that the final disposition of the action may as a practical matter impair or impede the firm's ability to protect that interest, and neither of the existing parties was "concerned with protecting the [law firm's] interest." *Id.* at 54.

From *Gaines* forward, the Fifth Circuit has consistently held that a contingent attorney's fee suffices as an "interest relating to the property or transaction that is the subject of the action" and that a law firm discharged without cause after performing work for the client "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." *Adam Joseph Res.*, 919 F.3d at 866-67. *Gaines* and the cases following it also recognize that after an attorney has been discharged without cause, the parties to the underlying case will not concern themselves with protecting the former attorney's interest. *Id.* at 868.

Here, under *Gaines* and its progeny, HFL has an interest "relating to the property or transaction that is the subject matter of" this litigation. HFL represented Respondents in this matter from January 7, 2020, to April 7, 2023, over three years. HFL earned its negotiated fee interest in any recovery. The contractual lien does not equate to a security interest in the case, but it does entitle HFL to a lien on any recovery Respondents receive in this litigation. And Respondents should repay HFL's expenses per the terms of the Retainer Agreement, should they recover in the case that HFL brought for them.

In accordance with Rule 24(a) of the Federal Rules of Civil Procedure, Intervenor HFL moves for leave to intervene as of right as a party with an interest in any recovery made the subject of this action. Intervenor attaches as Exhibit B its proposed Plea in Intervention by Hendler Flores

Law, LLP (Complaint) and seeks leave of Court to file the Complaint.

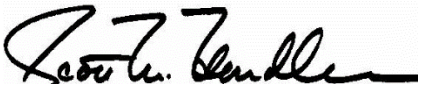
D. CONCLUSION

WHEREFORE, Intervenor HFL asks that the Court grant its Motion for Leave to Intervene, allow it to file its Plea in Intervention, and grant it such other and further relief to which Intervenor may be entitled at law or in equity.

Dated: June 12, 2023

Respectfully submitted,

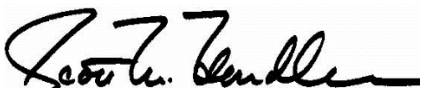
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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system on June 12, 2023.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and **ELIZABETH HERRERA**, Plaintiffs. v. **CITY OF AUSTIN, LUIS SERRATO, and GABRIEL GUTIERREZ,** Defendants. **Hendler Flores Law, PLLC,** Intervenor.	§ § § § § § § § § § § § §	**Case Nos. 22-CV-655, 23-CV-9-RP**

FIRST AMENDED DECLARATION OF SCOTT M. HENDLER IN SUPPORT OF INTERVENOR'S FIRST AMENDED MOTION FOR LEAVE TO INTERVENE AND PLEA IN INTERVENTION

I, SCOTT M. HENDLER, do declare upon personal knowledge and under penalty of perjury in the State of Texas, that I am an attorney duly licensed to practice law in the State of Texas, and that the following is true and correct:

1. I am the Chief Executive Officer and firm principal of Hendler Flores Law, PLLC (HFL), with offices at 901 S. MoPac Expressway, Bldg. 1, Suite #300, Austin, Texas 78746.

2. On January 7, 2020, Alex Gonzales, Sr, and Elizabeth Herrera (aka Elizabeth Gonzales (collectively, Respondents), signed a written Attorney Retainer Agreement (Retainer Agreement) with HFL employing HFL to represent them and provide legal services in connection with the death of their son, Alex Gonzales, Jr.

3. The Retainer Agreement set forth the basis for the payment of legal fees as a contingent percentage of any recovery obtained in the litigation by settlement, judgment, or otherwise as follows, "I agree to pay [HFL] an attorneys' fee of 40% of any settlement, verdict, or recovery obtained in the matter for which [Respondents] retained [HFL] for their legal services performed during investigation, pretrial, and trial proceedings related to the claim[s] [for the death of their son, Alex Gonzales, Jr.]."

EXHIBIT A

4. The Retainer agreement also provided that HFL would recover expenses as follows, "I understand that attorneys' fees will be calculated based on the gross amount of settlement, verdict or recovery, and the expenses which have been advanced will be deducted from the net proceeds payable to the Client after deduction of the attorneys' fees."

5. The Retainer Agreement further granted HFL a lien:

In recognition of [HFL]'S interest in the proceeds of this legal matter, and to secure payment to [HFL] of all expenses, court costs, and attorney's fees Client is obligated to pay under this retainer agreement, Client hereby grants to [HFL] a charging lien immediately applicable to this matter and any and all recoveries on his/her claims or causes of action, whether by settlement, collection of a judgment, or otherwise. Client understands that this charging lien may be used to protect [HFL]'S fee and right to reasonable compensation for work done in the event Client discharges [HFL] without cause.

6. With respect to termination, the Retainer Agreement reads:

Should Client elect to terminate [HFL]'S representation without sufficient legal cause prior to the full conclusion of [HFL]'S services under this contract, Client understands and agrees that [HFL] has a claim for all expenses of litigation incurred up to that time and its full percentage contingent attorneys' fee of 40% of the recovery which will become due upon receipt by me or by any successor attorney of any proceeds for any remaining portion of my personal injury or wrongful death claim. In the event of such termination, **Client agrees that Texas law will apply to the rights of the parties to this agreement.** Texas law provides that unless [HFL] is terminated "for cause" as that term is understood under Texas law, [HFL] will retain its full contingent fee interest in this matter unless the parties agree otherwise.

7. While representing Respondents, HFL has investigated the facts surrounding the shooting death of Alex Gonzales, Jr.; HFL conducted legal research related to the law applicable to the death of Alex Gonzales, Jr.; HFL engaged probate counsel and advanced the costs of such counsel and his expenses to open probate for the estate of Alex Gonzales, Jr.; HFL filed two separate lawsuits on behalf of Respondents for damages from the death of Alex Gonzales, Jr.; HFL represented Respondents in family law proceedings regarding the welfare of their grandchild Z.A.G.; HFL drafted, served, and responded to written discovery to the City of Austin; HFL noticed and conducted three depositions of the officers involved in Alex Gonzales's shooting; HFL ordered, paid for , and obtained medical records; HFL paid for and facilitated a private autopsy of Alex Gonzales, Jr.,; HFL, consulted

experts and retained one expert on the subject of the use of force by police and police tactical conduct; and HFL assisted the family with ancillary matters including probate, memorials, grief support and management, and family law matters, and assisting with procuring reliable transportation for Elizabeth Herrera to attend work and school, among other services.

8. On March 24, 2023, HFL received a letter from Michael Marconi from the Marconi Firm—claiming to represent the Respondents. Mr. Marconi's letter stated that Respondents intended to terminate HFL's representation but requested that HFL's representation continue until April 7, 2023. The Marconi letter requested that HFL transfer the Gonzales case file to Mr. Puckett's new employer, the Devlin Law Firm LLC. A true and correct copy of the letter received on March 24, 2023, is attached hereto as Exhibit A. Respondents discharge of HFL was without cause under Texas law.

9. HFL continues to compile expenses incurred on Respondents' behalf during HFL's representation. HFL's records currently show that HFL has incurred $65,136.95, however, this amount could change as HFL accountants identify additional expenses. Respondents have not repaid any of these expenses.

10. By this intervention, HFL seeks to protect its interest in the proceeds of any recovery Respondents obtain up to and through final judgment in this matter, to ensure payment of its contingent fee as well as its right to reimbursement for all expenses advanced on Respondents' behalf.

11. HFL has an interest in the property that is the subject matter and objective of the assertion of the claim that forms the basis of Respondents' action—namely money damages arising from the death of Alex Gonzales, Jr. and the expenses HFL incurred on Respondents' behalf.

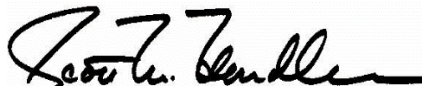
12. Because HFL no longer counsel of record in this matter, it cannot, as a practical matter, protect this interest without intervention. A settlement, verdict, or other recovery will ordinarily be in the form of money paid to Respondents and its replacement counsel of record. Neither will adequately protect HFL's interests without this Court's order that it do so.

13. On May 23, 2022, HFL received correspondence from Respondents' counsel, demanding that HFL withdraw its Motion for Leave to Intervene, accusing HFL of violating FRCP 11 and Texas Disciplinary Rule 1.08(h), and threatening to file a FRCP 11 Motion for Sanctions against HFL.

I declare under penalty of perjury that the foregoing is true and correct.

EXHIBIT A

DATED: June 9, 2023, in Austin, Texas.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and ELIZABETH HERRERA, Plaintiffs. v. **CITY OF AUSTIN, LUIS SERRATO, AND GABRIEL GUTTIEREZ**, Defendants. Hendler Flores Law, PLLC, Intervenor.	§ § § § § § § § § § § § §	**Case Nos. 22-CV-655, 23-CV-9-RP**

FIRST AMENDED PLEA IN INTERVENTION
BY HENDLER FLORES LAW, PLLC

Hendler Flores Law, PLLC (HFL or Intervenor) files, pursuant to Federal Rule of Civil Procedure 24(a)(2), this Plea in Intervention and shows the Court the following:

I.

PARTIES AND SERVICE OF PROCESS

1. **Intervenor Hendler Flores Law, PLLC** (HFL) is a professional limited liability company with its principal place of business in Travis County, Texas.

2. **Respondent Alex Gonzales, Sr.** is a citizen of Texas and a resident of Bastrop County, Texas. Alex Gonzales, Sr. is the father and next of kin of Alex Gonzales, Jr. Alex Gonzales, Sr. may be served with process by serving counsel of record via the Court's CM/ECF system.

3. **Respondent Elizabeth Herrera** (aka Elizabeth Gonzales) is a citizen of Texas and a resident of Bastrop County, Texas. Elizabeth Herrera is the mother and next of kin of Alex

Gonzales, Jr. Elizabeth Herrera may be served by serving her counsel of record via the Court's CM/ECF system.

4. **Minor child Z.A.G.** is a person under the age of eighteen (18) who is a citizen of Texas and, on information and belief, is a resident of Travis County, Texas. This action is brought on behalf of Z.A.G. by Alex Gonzales, Sr. and Elizabeth Herrera as "Next Friends." Z.A.G. may be served with process through service on counsel for Alex Gonzales, Sr. and Elizabeth Herrera as well as on counsel for **Z.A.G.'s** custodial parent's attorney, Jeff Edwards, The Edwards Law Firm, 603 West 17th Street, Austin, Texas 78701.

II.

FACTS

5. On January 7, 2020, Respondents retained HFL as memorialized by a signed, written Attorney Retainer Agreement (Retainer Agreement) employing HFL to represent them in connection with the instant litigation.

6. The Retainer Agreement includes the basis for the charging of legal fees as a contingent percentage of any monetary recovery in the litigation by settlement, judgment, or otherwise. It provides that the plaintiffs agreed to pay a contingent attorneys' fee of 40% of any settlement, verdict, or recovery obtained in the matter to compensate HFL for its legal services in the case. The Retainer Agreement also set forth that HFL would recover the expenses it advanced on the Respondents' behalf from the Respondents' net amount of any monetary settlement, verdict, or recovery, after the deduction of the 40% attorney's fee.

7. The Retainer Agreement also provides, and the Respondents agreed, that HFL has a charging lien to secure recovery of its fees and expenses in the matter, and that if Respondents terminated HFL without cause, HFL would continue to have a claim for its full

percentage contingent attorneys' fee of 40% of the gross recovery, including its expenses incurred up to the time of termination. The Retainer Agreement states that if Respondents were to terminate HFL without cause and later obtain a recovery, the full percentage of the contingent fee would remain due, in addition to expenses incurred prior to the date of termination from that recovery.

8. While representing Respondents, HFL investigated, researched, and filed two separate lawsuits on behalf of the Respondents; served and responded to written discovery; noticed and conducted depositions of two witnesses; ordered medical records; HFL facilitated a private autopsy; consulted experts and retained one expert on the subject of police excessive force; and reviewed thousands of pages of records and hours of video. HFL also incurred several significant expenses for Respondents' benefit, including assisting the family with ancillary matters including probate, memorials, grief support and management, and family law, among other services. Those expenses are, at a minimum, $65,136.95. Respondents have not repaid these expenses.

9. On March 24, 2023, without any notice whatsoever, HFL received a letter from the Marconi Firm informing HFL that Respondents intended to discharge HFL effective April 7, 2023, and transfer their representation to Mr. Puckett and his new employer, the Devlin Law Firm LLC. Respondents discharge of HFL was without cause. HFL subsequently withdrew and transferred the file to the Devlin Law Firm on April 24, 2023, and this Court granted HFL's motion to withdraw on May 2, 2023.

III.

CLAIM

10. Intervenor's interest in any monetary recovery arises from a written contingent

fee contract with Intervenor that Respondents signed providing for a fee equal to forty percent of any monetary recovery Respondents obtained in this litigation. An attorney's right to assert a lien against client property to ensure payment of professional fees has been recognized at common-law since the early eighteenth century. *See, e.g.,* Everett, Clarke & Benedict v. Alpha Portland Cement Co., 225 F. 931, 935 (2d Cir. 1915) (summarizing history of attorney liens). The charging lien that Respondents contractually agreed to in the Retainer Agreement retaining Intervenor applies to the proceeds of a recovery and contrary to Respondents' current attorneys, does not provide for a security interest in the underlying case.[1] The contractually agreed to charging lien protects the attorney's fees and expenses from the proceeds of any judgment, decree or other order in his client's favor entered or made in such proceeding.

11. Texas common law establishes charging liens as a way for attorneys to secure recovery of their fees and expenses. *See, e.g.*, *Rotella v. Cutting*, No. 02-10- 00028-CV, 2011 WL 3836456, at *5 (Tex. App.—Fort Worth Aug. 31, 2011, no pet.); *Tarrant Cty. Hosp. Dist. v. Jones*, 664 S.W.2d 191, 196 (Tex. App.—Fort Worth 1984, no pet.). In Texas, when a client employs an attorney on a contingent-fee basis and then discharges the attorney without cause before the attorney completes the representation, the attorney may sue to enforce the contract and recover the amount of the contracted compensation from any monetary damages that the client subsequently recovers. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 561 (Tex. 2006) (citing *Mandell & Wright v. Thomas*, 441 S.W.2d 841, 847 (Tex. 1969)). The ability of an attorney discharged without cause to recover for the services he rendered dates back at least as far as 1855. *Myers v. Crockett*, 14 Tex. 257 (1855). Respondents discharged HFL without

[1] To the extent a court interprets the contractual language describing the charging lien as providing for a security interest in the underlying claim as opposed to the proceeds from a recovery on the underlying claim, Intervenors expressly disavow any such interest in the Respondents' underlying claim.

notice and without good cause.

12. Disposition of the case through a negotiated agreement will almost certainly involve payment of a money recovery to Respondents. In that event, it will become exponentially difficult if not impossible for Intervenor to recover its fee. This is because the funds could be put out of reach through a structed settlement—a type of annuity for personal injury plaintiffs only—that will pay Respondents over a long period of time; alternatively, Respondents, may spend the funds and deplete them before Intervenor can recover its fees and expenses from the recovery, or Respondents may otherwise dispose of the funds before Intervenor could obtain its monetary interest through legal action.

13. Respondents have no incentive to protect HFL's interest in any monetary recovery they obtain in this matter because it will likely reduce their net recovery. That is because Respondents have hired replacement counsel who they purport to compensate through a percentage of any monetary recovery they obtain through the litigation. Similarly, none of the Defendants have any incentive to protect HFL's contingent fee interest in the recovery. In fact, if the matter is resolved through a negotiated agreement either before or after a verdict, it is standard practice for a Defendant to require a Plaintiff (Respondents in this case) to assume all responsibility for any party claiming an interest in the settlement funds. As such, Defendants have no incentive to protect HFL's interests in the recovery, and now Respondents interests conflict with HFL's because payment of HFL's fee risks reducing Respondents recovery on top of the fee that Respondents have agreed to pay its replacement counsel.

IV.

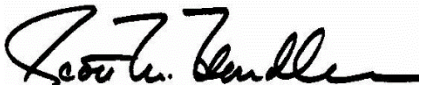
PRAYER

WHEREFORE, Intervenor requests citation and service be made as requested and that the Court award directly to Intervenor the expenses it has advanced and its share of any settlement, verdict, or other recovery to be paid by Defendants or judgment awarded against Defendants, in addition to such other and further relief to which Intervenor may be entitled at law or in equity.

Dated: June 12, 2023

Respectfully submitted,

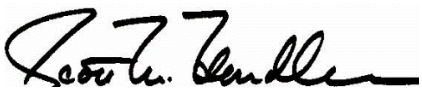
HENDLER FLORES LAW, PLLC



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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system on June 12, 2023.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. **CITY OF AUSTIN** *Defendant*.	§	**Case No. 1:22-cv-00655-RP** **JURY TRIAL REQUESTED**
ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. **LUIS SERRATO**, and **GABRIEL GUTIERREZ** *Defendants*.	§	**Case No. 1:23-cv-00009-RP** **JURY TRIAL REQUESTED**

PLAINTIFFS' RESPONSE TO
HENDLER FLORES LAW, PLLC'S FIRST AMENDED MOTION FOR LEAVE TO INTERVENE AS OF RIGHT AND BRIEF IN SUPPORT

Table of Contents

I. SUMMARY OF RESPONSE 1

II. FACTUAL AND PROCEDURAL BACKGROUND 3

III. LEGAL STANDARDS 10

IV. ARGUMENT AND AUTHORITIES 11

A. Under Texas Law, HFL's Proposed Intervention Claim is not Ripe. Plaintiffs Will Be Severely Prejudiced If HFL is Allowed to Intervene at This Time. 11

B. The Court Lacks Jurisdiction Over the Proposed Intervention Claim 14

C. HFL Has Not Met the Requirements for Intervention Under FRCP 24(a)(2) 16

1. HFL Does Not Have an Interest in the Property or Transaction That is the Subject of This Litigation 16

2. Disposition of This Case Will Not Impair HFL's Rights or Interests Because HFL Has Other Adequate Ways to Enforce Its Rights 18

D. The Proposed Intervention Claim Would Create an Unnecessary Sideshow That Would Distract From Discovery and Litigation of Plaintiffs' Originally Filed Claims 19

V. CONCLUSION 20

TABLE OF AUTHORITIES

Cases **Page(s)**

Adam Joseph Res. (M) Sdn. Bhd. v. CNA Metals Ltd.,
919 F.3d 856 (5th Cir. 2019). 19

Alam v. Fannie Mae,
2007 U.S. Dist. LEXIS 92209, (S.D. Tex. Dec. 12, 2007). 19

Bibles v. City of Irving,
2009 U.S. Dist. LEXIS 67462 Case No. 3:08-CV-1795-M (N.D. Tex. July 28, 2009). 20

Bigham v. Southeast Tex. Envtl., LLC,
458 S.W.3d 650 (Tex. App.—Houston[14th] 2015). 13

Box v. PetroTel, Inc.,
33 F.4th 195 (5th Cir. 2022). 15

Campbell Harrison & Dagley, L.L.P. v. PBL Multi-Strategy Fund, L.P.,
744 F. App'x 192 (5th Cir. 2018). 20

Carden v. Arkoma Assocs.,
494 U.S. 185 (1990). 15

Casey v. March,
30 Tex. 180 (1867). 17

Catlin Specialty Ins. Co. v. Ward,
2020 U.S. Dist. LEXIS 250696 Case No. 1:20-cv-92 (N.D. Miss. Aug. 24, 2020). 18

Causey v. State Farm Section I,
2018 U.S. Dist. LEXIS 99855 (E.D. La. 2018). 16

Citadel Recovery Servs., LLC v. T.J. Sutton Enters., LLC,
2021 U.S. Dist. LEXIS 229250 (E.D. La. March 15, 2021). 18

Defense Distributed v. United States Dep't of State,
2018 U.S. Dist. LEXIS 126388, Case No. 1:15-cv-372 (W.D. Tex. July 27, 2018). 10, 14

Desilva v. Taylor,
2022 U.S. Dist. LEXIS 171318 Case No. 1:21-cv-00129-RP (W.D. Tex. Sep. 22, 2022). 20

Douglas-Peters v. Cho, Choe & Holen, P.C.,
2017 Tex. App. LEXIS 1836 (Tex. App.—Dallas [5th] Mar. 3, 2017). 12

Grantham v. J&B Sausage Co.,
2016 Tex. App. LEXIS 5168 (Tex. App.—Houston [14th] May 17, 2016). 12

Griffin v. Lee,
621 F.3d 380 (5th Cir. 2010). 16
Gunn v. Minton,
568 U.S. 251, 257-65 (2013). 15
Hoover Slovacek LLP v. Watson,
206 S.W.3d 557 (Tex. 2006)..... 11, 12
Jetall Cos. v. Hoover Slovacek LLP,
2022 Tex App. LEXIS 2010 (Tex. App.—Houston[14th] March 29, 2022)..... 13
Kneeland v. National Collegiate Athletic Assoc.,
806 F.2d 1285 (5th Cir. 1987). 11
Lake Eugenie Lan & Dev., Inc. v. BP Exploration & Prod.,
546 Fed. Appx. 502 (5th Cir. 2013)..... 14
Levine v. Bayne, Snell & Krause, Ltd.,
40 S.W.3d 92 (Tex. 2001)..... 12
Mandell & Wright v. Thomas,
441 S.W.2d 841 (Tex. 1969)..... 12
Martin v. Camp,
114 N.E. 46 (N.Y. 1916)..... 13
McDonald v. E.J. Lavino Co.,
430 F.2d (5th Cir. 1970). 14
McDonald v. E.J. Lavino Co.,
430 F.2d 1065 (5th Cir. 1970). 10
Md. Am. Gen. Ins. Co. v. Blackmon,
639 S.W.2d 455 (Tex. 1982)..... 13
Mitchell v. Bailey,
982 F.3d 937 (5th Cir. 2020). 15
New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.,
732 F.2d 452 (5th Cir. 1984). 11
Owens-Corning Fiberglas Corp. v. Caldwell,
818 S.W.2d 749 (Tex. 1991)..... 13
Patterson v. Corvel Corp.,
2021 U.S. Dist. LEXIS 168456 (W.D. La. Aug. 12, 2021)..... 16

Ross v. Marshall,
456 F.3d 442 (5th Cir. 2006). 18
Rotella v. Cutting,
2011 Tex. App. LEXIS 7116 (Tex. App.—Fort Worth Aug. 31, 2011)..... 17
Russell v. Harris County,
2020 U.S. Dist. LEXIS 215333 (S.D. Tex. Nov. 18, 2020)..... 10, 14
Saacks v. Privilege Underwriters Reciprocal Exch.,
2017 U.S. Dist. LEXIS 14531, Case No. 16-1149 (E.D. La. Feb. 2, 2017). 20
Samuels v. Twin City,
602 Fed. Appx. 209 (5th Cir. 2015)..... 16
Sierra Club v. Espy,
18 F.3d 1202 (5th Cir. 1994). 10, 11, 14
Singh v. Duane Morris LLP,
538 F.3d 334 (5th Cir. 2008). 15
Slim v. Abuzaid,
2018 U.S. Dist. LEXIS 155488 Case No. 3:16-CV-1769-S-BH (N.D. Tex. Aug. 9, 2018). ... 20
Strawbridge v. Curtiss,
3 Cranch. 267 (1806). 15
Tarrant Cty. Hosp. Dist. v. Jones,
664 S.W.2d 191 (Tex. App.—Fort Worth 1984)..... 17
Texas v. Real Parties,
259 F.3d 387 (5th Cir. 2001). 20
Thomson v. *Findlater Hardware Co.,*
205 S.W. 831 (Tex. 1918)..... 17
Tolliver v. U-Haul Co.,
2017 U.S. Dist. LEXIS 221223, Case No. 09-cv-313 (W.D. La. June 8, 2017). 16
Town of Chester v. Laroe Estates, Inc.,
581 U.S. 433 (2017)..... 10, 14
United States v. Betancourt,
2005 U.S. Dist. LEXIS 40483 (S.D. Tex. Dec. 8, 2005)..... 17
Valley Ranch Dev. Co. v. Fed. Deposit Ins. Corp.,
960 F.2d 550 (5th Cir. 1992). 19

Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm'n,
834 F.3d 562 (5th Cir. 2016). 10, 11, 14, 18

Wilkinson v. Susman,
2020 Tex. App. LEXIS 8953 (Tex. App.—Houston [14th] Nov. 19, 2020). 12

Wood v. Tran,
2019 Tex. App. LEXIS 6756 (Tex. App.—Houston [1st] Aug. 6, 2019). 12

Statutes

28 U.S.C. §1332 ..... 15, 16

28 U.S.C. §1367 ..... 15, 16

42 U.S.C. §1983 ..... 14, 15

Other Authorities

RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §35(2) (2000). 12

State Bar of Texas Professional Ethics Committee Opinion No. 610 9

Tex. Comm. On Professional Ethics, Op. 610 (2011) 17

TEX. DISCIPLINARY R. PROF'L CONDUCT §1.04(a) 12

TEX. DISCIPLINARY R. PROF'L CONDUCT §1.15 11

Rules

Fed. R. Civ. P. 11 9

Fed. R. Civ. P. 17 5

Fed. R. Civ. P. 24. ..... passim

I. SUMMARY OF RESPONSE

Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera Gonzales (collectively "Plaintiffs") oppose the proposed First Amended Plea in Intervention[1] of Hendler Flores Law, PLLC (herein "HFL") on both substantive and procedural grounds.

Substantively, Plaintiffs dispute HFL's contention that Plaintiffs terminated HFL and attorney Scott Hendler without cause. To the contrary, Plaintiffs insist that HFL is not entitled to enforce its contingent fee agreement because Plaintiffs terminated Hendler and HFL for good and sufficient cause.[2] After the present lawsuit concludes, Plaintiffs expect to file claims against HFL and attorney Scott Hendler for professional negligence, breach of contract, and breach of fiduciary duty arising from Hendler's and HFL's prior representation of them in this lawsuit.[3]

Significantly, however, Plaintiffs will be required to use and disclose otherwise privileged information in order to prove that they fired Hendler and HFL for cause.[4] Plaintiffs should not be required to do so now—especially not in the context of this same pending lawsuit. Plaintiffs' have requested that HFL withdraw this motion to intervene and litigate HFL's dispute with Plaintiffs in any other proper forum, but HFL has refused. HFL insists on having this dispute with its former clients right here in this case, in the forum where disclosure of privileged information regarding Hendler's and HFL's misdeeds ***would be most prejudicial to Plaintiffs***. By insisting on intervention here, HFL seeks a litigation advantage against its own former clients by making it burdensome and prejudicial for Plaintiffs to disclose the privileged information that they intend to use to prove that they terminated Hendler and HFL for good and sufficient cause.

---

[1] Plaintiffs file this Response to [Dkt. 43] in Case No. 1:22-cv-00655 (herein the "-655 Case") and [Dkt. 32] in Case No. 1:23-cv-00009 (herein the "-009 Case").
[2] *See* Declaration of Donald Puckett ("Puckett Declaration"), Exh. A at ¶30.
[3] *See id.* at ¶30.
[4] *See id.* at ¶31.

HFL's proposed First Amended Plea in Intervention against its former clients is not only distasteful; it also is improper procedurally. Under Texas law, HFL's proposed intervention claim is premature because it is not ripe. In Texas, a fired contingent fee lawyer has no legal rights against the former client until the client actually receives money or property that is subject to the contingent fee agreement. This substantive Texas legal rule is intended, in part, to protect the clients' important interest in not being forced prematurely to disclose privileged information in a dispute against the terminated contingent-fee lawyer.

HFL's proposed First Amended Plea in Intervention also is procedurally defective under federal law. First, the Court lacks an independent basis for Article III jurisdiction over HFL's intervention claim, which is required when the proposed intervention claim seeks relief that is different than the relief Plaintiffs seek. Second, HFL has not met the requirements for intervention under Fed. R. Civ. P. 24(a)(2), for several reasons. HFL does not, as required by FRCP 24(a)(2), "claim[] an interest relating to the property or transaction that is the subject of [this] action" because: (1) under Texas law, attorneys and law firms are *ethically prohibited* from obtaining a charging lien on a client's cause of action or a client's future lawsuit recovery; and (2) HFL, at most, has an indirect interest in this litigation because HFL's alleged legal rights are contingent upon certain disputed facts (such as whether HFL was terminated for cause) that do not overlap with the disputed facts in the existing -655 and -009 Cases. Additionally, HFL has not shown, as required by FRCP 24(a)(2), that "disposing of the action may as a practical matter impair or impede [HFL's] ability to protect its interests." HFL's assertions on this point are entirely hypothetical and speculative; and HFL has adequate means for protecting its alleged contractual rights apart from intervention in this case.

If the Court is inclined to grant any part of HFL's request to intervene, the Court should at least: (1) sever HFL's proposed intervention claim and stay litigation until conclusion of

litigation over Plaintiffs' Section 1983 claims, and (2) make clear in the Court's order that HFL has no discovery rights or procedural rights with respect to Plaintiffs' Section 1983 claims.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed the -655 Case against the City of Austin on July 6, 2022.[5] At that time, attorney Donald Puckett was an employee of HFL and appeared as attorney of record on the Original Complaint (along with attorney Scott Hendler).[6] On August 4, 2022, Plaintiffs served requests for production of documents on the City of Austin that were signed and served by attorney Puckett.[7] In September 2022 through November 2022, Plaintiffs took third-party fact witness depositions of APD Officer Gabrielle Gutierrez, APD Officer Luis Serrato and APD Officer Brian Nenno in the -655 Case; and each of these three depositions was taken by attorney Puckett on behalf of Plaintiffs.[8]

On December 28, 2022, attorney Puckett was fired from the HFL law firm by Scott M. Hendler, suddenly and without warning.[9] On December 29, 2022, Hendler and HFL filed a

[5] *See* Original Complaint, -655 Case [Dkt. 1].
[6] *See id.* at p. 35.
[7] *See* Puckett Declaration, Exh. A at ¶6.
[8] *See id.* at ¶6. Because the -009 Case had not yet been filed, and no claims had yet been asserted against Officer Gutierrez or Officer Serrato, these were third-party fact witness depositions only in the -655 Case.
[9] *See id.* at ¶¶7-16. In their reply on their motion to withdraw, Hendler and HFL informed the Court that Puckett "abruptly resigned" from his employment with HFL. *See* Reply Brief, -665 case [Dkt. 29 at p.1 and fn.1], -009 Case [Dkt. 16 at p.1 and fn.1]. Hendler's and HFL's assertion is completely inaccurate. *See* Puckett Declaration, Exh. A at ¶16. Puckett is in possession of a video recording of the December 28, 2022 Zoom meeting in which HFL and Hendler falsely allege that Puckett resigned. *See id.* at ¶7. The recording demonstrates that Puckett repeatedly insisted he was not resigning, to which Hendler responded by saying that he (Hendler) was terminating Puckett's employment immediately. *See id.* at ¶¶8-9, ¶¶11-12. HFL then terminated Puckett's email and electronic computer access to HFL's systems within 30 minutes after the meeting. *See id.* at ¶10. HFL and Hendler filed motions to withdraw Puckett from all of the firm's active civil cases the following day. *See id.* at ¶10.

motion to withdraw Puckett as attorney of record from this lawsuit.[10] At no time did Hendler or anyone from HFL request that Puckett hand off his task list or other work product related to the pending -655 Case.[11] In fact, a few days after HFL terminated Puckett's employment, HFL's outside employment lawyer sent a letter to Puckett instructing him to have no further communications with any HFL attorney or employee regarding Puckett's prior work with HFL, precluding Puckett from making a professional hand-off of his work-related responsibilities.[12]

On January 4, 2023, HFL filed the -009 case against Defendant Gutierrez and Defendant Serrato, with attorney Scott M. Hendler listed as the only attorney of record for Plaintiffs on the Original Complaint for the -009 Case.[13]

The Original Complaints in both the -655 and -009 Cases purported to assert claims in Plaintiff Alex Gonzales, Sr.'s capacity as "Administrator of the Estate of Alex Gonzales, Jr."[14] Alex Gonzales, Sr., however, has never been appointed administrator of his deceased son's estate.[15] Moreover, in both the -655 and -009 Cases the Original Complaints did not assert the wrongful death claims of minor child Z.A.G.,[16] whose claims ordinarily should be brought in the same civil action as other statutory wrongful death claimants.[17]

In February, 2023—for a myriad of reasons that will not be fully explained here[18]—Plaintiffs retained attorney Michael Marconi as independent counsel to advise them on their

[10] *See* Plaintiffs' Motion to Withdraw Donald Puckett as Counsel of Record, -655 Case [Dkt. 20] ("Hendler Flores Law . . . respectfully requests that Donald Puckett be permitted to withdraw as counsel of record for Plaintiffs in this matter.").
[11] *See* Puckett Declaration, Exh. A at ¶17.
[12] *See id.* at ¶13 and ¶¶17-18.
[13] *See* Original Complaint, -009 Case [Dkt. 1 at 34].
[14] *See* Original Complaints, -655 Case [Dkt. 1], -009 Case [Dkt. 1].
[15] *See* Puckett Declaration, Exh. A at ¶23.
[16] *See* Original Complaints, -655 Case [Dkt. 1], -009 Case [Dkt. 1].
[17] *See* First Amended Complaints, -655 Case [Dkt. 26 at ¶5], -009 Case [Dkt. 12 at ¶5].
[18] Plaintiffs cannot here explain all of the reasons they sought independent counsel to advise them on their termination rights without revealing privileged information. Plaintiffs emphasize here that

rights with respect to terminating HFL and Hendler under their contingent fee agreement with HFL.[19] On March 24, 2023, Mr. Marconi sent a letter to Hendler and HFL informing them that Plaintiffs had chosen to terminate their attorney-client relationship with HFL.[20] Mr. Marconi's letter further informed HFL that Plaintiffs had retained the Devlin Law Firm ("DLF") and attorney Puckett as replacement counsel for this lawsuit, and instructed HFL to forward the clients' file to DLF and to withdraw from the pending cases no later than April 7, 2023.[21]

Within days of filing a notice of appearance, DLF filed a First Amended Complaint in both the -655 and -009 Cases.[22] Each amended complaint removed references to claims that purportedly had been asserted in Alex Gonzales, Sr.'s capacity as administrator of Alex Gonzales, Jr.'s estate.[23] Each amended complaint also asserted wrongful death claims on behalf of minor child Z.A.G., in Plaintiffs' capacity as "next friend" to Z.A.G.[24] Shortly thereafter, Plaintiffs filed a Motion for Appointment of Guardian Ad Litem in an effort to ensure that the interests of Z.A.G. are adequately protected in these lawsuits.[25]

Mr. Hendler filed a motion to withdraw as counsel of record from the -655 and -009 Cases on April 11, 2023.[26] But Plaintiffs were forced to oppose the motion to withdraw because Hendler and HFL *had not yet begun* to transfer the client file to Plaintiffs' replacement counsel.[27]

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their reasons for seeking independent counsel and their decision to terminate Hendler and HFL for cause were not limited to the facts and reasons set forth in this response brief.

[19] *See* Puckett Declaration, Exh. A at ¶20.

[20] *See* Puckett Declaration, Exh. A at ¶22. *See also* Exh. B, Termination Letter from Michael Marconi to HFL dated March 24, 2023 ("Marconi Termination Letter).

[21] *See* Exh. B, Marconi Termination Letter.

[22] *See* First Amended Complaints, -655 Case [Dkt. 26], -009 Case [Dkt. 12].

[23] *See id.*

[24] *See id.*

[25] *See* Motions for Appointment of Guardian Ad Litem Pursuant to FRCP17(C)(2), -655 Case [Dkt. 30], -009 Case [Dkt. 17].

[26] *See* Motions to Withdraw Scott M. Hendler as Counsel of Record for Plaintiffs, -655 Case [Dkt. 27], -009 Case [Dkt. 14].

[27] *See* Plaintiffs' Responses to Motions to Withdraw, -655 Case [Dkt. 28], -009 Case [Dkt. 15].

HFL filed a reply, arguing that its delay in transferring the client's file to replacement counsel was not prejudicial because "[t]here are no immediate deadlines in this case that warrant the Court's involvement or otherwise jeopardize the interests of the clients or the case in any way."[28] On April 27, 2023, Plaintiffs filed a notice withdrawing their opposition to Hendler's motion to withdraw, informing the Court that HFL had finally transferred the "reasonably complete" client file to replacement counsel.[29]

DLF's inspection of HFL's litigation file confirmed that, after Puckett was terminated from his employment on December 28, 2022, HFL and Hendler had performed no substantial work related to the -655 Case, and they had performed no substantial work related to the -009 Case other than filing the Original Complaint.[30] Hendler and HFL had allowed the cases to lie dormant for months, even though it was well-known publicly that critical case-related events had occurred. To wit:

- On December 27, 2022, it was announced that a Travis County grand jury had failed to return criminal indictments against either Officer Gutierrez or Officer Serrato.[31]
- In January, 2023, it also was publicly reported that APD would complete its internal affairs review within the 30 days following the grand jury's decision, as required by APD's employment contract with the police union.[32]

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[28] *See* Reply on Motions to Withdraw, -655 Case [Dkt. 29 at p.4], -009 Case [Dkt. 16 at p. 4]. At the time Plaintiffs terminated Hendler and HFL, Plaintiffs' expert disclosures in the -655 Case were due on March 30, 2023—a deadline that Hendler and HFL were not prepared to meet—thus requiring Plaintiffs' substitute counsel to immediately file a motion to extend this deadline. *See* Unopposed Motion for Extension of Certain Deadlines, -655 Case [Dkt. 24].

[29] *See* Plaintiffs' Notice of Non-Opposition to Motion to Withdraw, -655 Case [Dkt. 34], -009 Case [Dkt. 21].

[30] Puckett Declaration, Exh. A at ¶24.

[31] *See, e.g.,* https://www.kxan.com/news/local/austin/travis-county-da-says-no-indictment-in-deadly-jan-2021-police-shooting-of-alex-gonzales/?ipid=promo-link-block1 (dated December 27, 2022) (last visited July 10, 2023).

[32] *See, e.g.,* https://www.austinchronicle.com/news/2023-01-20/seeking-justice-for-the-killing-of-alex-gonzales/ (dated January 20, 2023) (last visited July 10, 2023).

- On January 25, 2023, it was publicly reported that the Austin Office of Police Oversight had been briefed on the results of APD's internal investigations and had recommended indefinite suspension of Gutierrez.[33]
- On January 26, 2023, it was publicly reported that the Austin Community Police Review Commission had been briefed on the results of APD's internal investigations and had recommended indefinite suspensions for both Gutierrez and Serrato.[34]
- On January 27, 2023, it was publicly reported that APD had determined no administrative discipline was warranted for either Gutierrez or Serrato, and that both officers would immediately be returning to their previous street patrol duties as APD patrol officers.[35]

Despite the occurrence of these important case-related events, HFL and Hendler took no steps at all to obtain documents or discovery related to these events. Indeed, HFL never even asked the City of Austin to supplement its response to previous requests for production in order to obtain documents related to APD's internal affairs investigation or APD's decision to return Gutierrez and Serrato to patrol duty.[36]

On May 23, 2023, after DLF replaced HFL as counsel of record, attorney Puckett made a formal request for the City of Austin to supplement its document production to outstanding requests for production (the same RFPs that Puckett had signed and served when he previously was an employee of HFL), to include all documents related to APD's complete internal affairs investigation.[37] On June 23, 2023, in response to Puckett's request, the City of Austin

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[33] *See, e.g.,* https://www.austintexas.gov/sites/default/files/files/Office%20of%20Police%20Oversight/Reports%20and%20Recommendations/OPO%20Discipline%20Recommendation%202021-0036_final.pdf (dated January 25, 2023) (last visited July 10, 2023).
[34] *See, e.g.,* https://www.austintexas.gov/sites/default/files/files/Community_Police_Review_Commission/Official%20Documents/CPRC%20Review%20of%20Case%202021-0036.pdf (dated January 26, 2023) (last visited July 10, 2023).
[35] *See, e.g.,* https://www.statesman.com/story/news/crime/2023/01/26/austin-police-officers-not-punished-alex-gonzales-death-2021-shooting/69841113007/ (dated January 27, 2023) (last visited July 10, 2023).
[36] *See* Puckett Declaration, Exh. A at ¶24.
[37] *See id.* at ¶25.

supplemented its document production by producing more than 1,600 additional pages of documents along with additional videos and audio recordings.[38]

Immediately after HFL and Hendler were terminated by Plaintiffs, HFL began taking a series of retaliatory steps against Plaintiffs and their current attorneys.

On March 27, 2023—the very next business day after being informed of Plaintiffs' decision to terminate their attorney-client relationship with HFL—HFL filed a Texas state court lawsuit asserting one claim of tortious interference with contract against Puckett individually and against DLF and the Marconi Law Firm.[39] Significantly, HFL's complaint did not allege any specific wrongful act committed by any of the defendants in furtherance of the alleged tortious interference.[40] Each defendant filed an answer to HFL's tortious interference lawsuit on or about June 5, 2023.[41] Unbeknownst to the defendants to HFL's lawsuit, however, HFL had voluntarily non-suited the state court lawsuit on June 2, 2023, without telling them.[42] Also on June 2, 2023, HFL filed a similar lawsuit for tortious interference, this time in federal court, naming the Devlin Law Firm as the only defendant.[43] HFL's federal lawsuit again asserts just one claim for tortious interference; and again, HFL's federal complaint does not allege any specific wrongful act in furtherance of the alleged tortious interference claim.[44]

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[38] *See id.* at ¶25.
[39] *See id.* at ¶26. *See also* Exh. C, HFL Original Petition dated March 27, 2023.
[40] *See* Exh. C, HFL Original Petition at ¶16, ¶¶23-24 (alleging "on information and belief" that defendants engaged in unspecified acts of tortious interference).
[41] *See* Puckett Declaration, Exh. A at ¶26. *See also* Exh. D, Answers to HFL Original Petition.
[42] *See* Puckett Declaration, Exh. A at ¶26.
[43] *See id.* at ¶26. *See also* Exh. E, HFL Original Complaint dated June 2, 2023.
[44] *See* Exh. E, HFL Original Complaint at ¶2, ¶16, ¶24 (alleging generally that DLF made "false accusations" about HFL and its attorneys without providing any specifics regarding when or by whom the false statements allegedly were made, and without specifying the content of the alleged false accusations).

On May 12, 2023, HFL filed a Motion for Leave to Intervene as of Right in both the -655 and -009 Cases.[45] HFL's motions for leave asserted HFL's right to intervene in each lawsuits on the basis of HFL's purported lien rights arising under HFL's contingent-fee Retainer Agreement with Plaintiffs.[46] On May 23, 2023, Plaintiffs' current counsel sent HFL a letter pursuant to Fed. R. Civ. P. 11 informing HFL that its assertion of contractual attorney lien rights was frivolous and sanctionable in light of State Bar of Texas Professional Ethics Committee Opinion No. 610, which unambiguously holds: "Under the Texas Disciplinary Rules of Professional Conduct, a lawyer representing a client in litigation may not acquire, by agreement with his client, a lien upon the subject matter of the litigation as a means of securing payment of the lawyer's fee with respect to the litigation."[47]

On June 12, 2023, HFL filed an Amended Motion for Leave to Intervene as of Right in both the -655 and -009 Cases, with each supported by a First Amended Declaration of Scott Hendler and a proposed First Amended Plea in Intervention.[48] HFL's amended motions state that the motions were amended "to clarify the basis of its lien in light of correspondence received from Respondents' Counsel demanding withdrawal of the Motion to Intervene on the ground that the motion violates Fed. R. Civ. P. 11."[49] As just one example of the significant revisions HFL made in its amended motions, the proposed First Amended Plea in Intervention now states: "To the extent a court interprets the contractual language describing the charging lien as providing for a security interest in the underlying claim as opposed to the proceeds from a recovery of the

[45] *See* Motions for Leave to Intervene, -655 Case [Dkt. 38], -009 Case [Dkt. 27].
[46] *See id.*
[47] *See* Puckett Declaration, Exh. A at ¶28. *See also* Exh. F, Rule 11 Letter from Puckett to Hendler and HFL dated May 23, 2023.
[48] *See* First Amended Motions for Leave to Intervene, -655 Case [Dkt. 43, 43-1, 43-2], -009 Case [Dkt. 32, 32-1, 32-2].
[49] *See id.*, -655 Case [Dkt. 43 at 1], -009 Case [Dkt. 32 at 1].

underlying claim, Intervenors expressly disavow such interest in the Respondents' underlying claim."[50]

III. LEGAL STANDARDS

When considering a motion for leave to intervene under Fed. R. Civ. P. 24, "[f]ederal courts should allow intervention ***when no one would be hurt*** and the greater justice could be attained." *Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016). *See also Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994); *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970).

When a party moves to intervene in order to pursue relief that is different than the relief sought by the parties to the existing lawsuit, the proposed intervenor must establish an independent basis for the court's Article III jurisdiction over the proposed intervention claim. *See Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 435 and 439-40 (2017). *See also Russell v. Harris County*, 2020 U.S. Dist. LEXIS 215333 at *11, 2020 WL 6784238 (S.D. Tex. Nov. 18, 2020); *Defense Distributed v. United States Dep't of State*, 2018 U.S. Dist. LEXIS 126388 at *9-10, Case No. 1:15-cv-372 (W.D. Tex. July 27, 2018) (Hon. Robert Pitman).

A party seeking to intervene in a pending civil action under Fed. R. Civ. P. 24 bears the burden of establishing its right to intervene under the requirements of the rule. *See Wal-Mart Stores*, 834 F.3d at 565. A party seeking to intervene as of right under FRCP 24(a)(2) must satisfy a four-prong test, articulated by the Fifth Circuit as follows:

> (1) the application must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and] (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

[50] *See* -655 Case [Dkt. 43-2 at p. 4, fn.1], -009 Case [Dkt. 32-2 at p. 4, fn.1].

Id. at 565. *See also New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984) (*en banc*). "If a party seeking to intervene fails to meet any one of those requirements, it cannot intervene as a matter of right." *Sierra Club,* 18 F.3d at 1205. *See also Kneeland v. National Collegiate Athletic Assoc.*, 806 F.2d 1285, 1287 (5th Cir. 1987).

IV. ARGUMENT AND AUTHORITIES

A. Under Texas Law, HFL's Proposed Intervention Claim is not Ripe. Plaintiffs Will Be Severely Prejudiced If HFL is Allowed to Intervene at This Time.

HFL's proposed intervention should be denied because allowing the dispute between HFL and Plaintiffs to go forward now, in the context of this pending lawsuit, would be severely prejudicial to Plaintiffs. To avoid this very type of prejudice, Texas law makes HFL's proposed intervention claim not ripe for judicial resolution at this time.

Under Texas law, "[w]hen interpreting and enforcing attorney-client fee agreements, it is not enough to simply say that a contract is a contract. There are ethical considerations overlaying the contractual relationship." *Hoover Slovacek LLP v. Watson*, 206 S.W.3d 557, 560 (Tex. 2006). "The attorney's special responsibility to maintain the highest standards of conduct and fair dealing establishes a professional benchmark" that must inform the Court's interpretation and application of a contract between attorney and client. *Id.* at 561.

"Public policy strongly favors a client's freedom to employ a lawyer of his choosing and, except in some instances where counsel is appointed, to discharge the lawyer during the representation for any reason or no reason at all." *Hoover Slovacek*, 206 S.W.3d at 562. *See also* TEX. DISCIPLINARY R. PROF'L CONDUCT §1.15, Comment 4 ("[a] client has the power to discharge a lawyer at any time, with or without cause . . ."). At the same time, Texas law also recognizes that a contingent fee attorney who is terminated prior to the conclusion of the representation may have a valid interest in seeking compensation for the legal services provided prior to termination. *See Hoover Slovacek*, 206 S.W.3d at 563.

To balance the competing interests of a client and a terminated contingent-fee lawyer, the Texas Supreme Court long ago established rules applicable in this context. *See id.* at 563 ("Striving to respect both interests, *Mandell* provides remedies to the contingent-fee lawyer who is fired without cause") (discussing *Mandell & Wright v. Thomas*, 441 S.W.2d 841 (Tex. 1969)). Under Texas law, a contingent fee lawyer may seek to enforce the agreement and recover the full contingent fee *only if* the lawyer was fired without cause, and *only if* doing so would not result in an unconscionable fee. *See Hoover Slovacek*, 206 S.W.3d at 561-62 (citing TEX. DISCIPLINARY R. PROF'L CONDUCT §1.04(a)). *See also Mandell*, 441 S.W.2d at 847.

An important component of this careful balance of interests is that the lawyer's claim for breach of contract does not become ripe until the client actually recovers money or property that is subject to the contingent fee. *See Hoover Slovacek*, 206 S.W.3d at 562. "In allowing the discharged lawyer to collect the contingent fee from any damages the client recovers, *Mandell* complies with the principle that a contingent-fee lawyer 'is entitled to receive the specified fee *only when and to the extent the client receives payment*.'" *Id.* at 562 (quoting RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §35(2) (2000)) (emphasis added).[51]

This substantive rule of ripeness, which prevents a terminated contingent-fee lawyer from prematurely bringing a claim against a former client, is driven in part by the prejudice and unfairness that would result from forcing the client to divulge privileged information in responding to the terminated lawyer's claim. *See Hoover Slovacek*, 206 S.W.3d at 562 (describing the strong public policy in favor of allowing a client to terminate the attorney-client

[51] *See also Levine v. Bayne, Snell & Krause, Ltd.,* 40 S.W.3d 92, 94 (Tex. 2001); *Wilkinson v. Susman*, 2020 Tex. App. LEXIS 8953 at *17-18, 2020 WL 6791057 (Tex. App.—Houston [14th] Nov. 19, 2020); *Wood v. Tran*, 2019 Tex. App. LEXIS 6756, at *8-9, 2019 WL 3559001 (Tex. App.—Houston [1st] Aug. 6, 2019); *Douglas-Peters v. Cho, Choe & Holen, P.C.*, 2017 Tex. App. LEXIS 1836, at *39-40, 2017 WL 836848 (Tex. App.—Dallas [5th] Mar. 3, 2017); *Grantham v. J&B Sausage Co.*, 2016 Tex. App. LEXIS 5168 at *13-14, 2016 WL 2935874 (Tex. App.—Houston [14th] May 17, 2016).

relationship at any time as "a 'firmly established rule which springs from the personal and confidential nature' of the attorney client relationship") (quoting *Martin v. Camp*, 114 N.E. 46, 48 (N.Y. 1916)). HFL's proposed intervention in this case perfectly illustrates the potential for prejudice to the client if a terminated lawyer's claim is allowed to proceed prematurely.

In the -655 Case, Defendant City of Austin served a request for production seeking "[t]he attorneys' fee agreement between you and your legal counsel relating to this Litigation." While they were represented by HFL law firm, Plaintiffs objected on the basis of privilege and withheld production of the HFL contingent fee agreement.[52] HFL's motion for leave and the supporting exhibits, however, each make extensive public disclosures of portions of the contingent fee agreement and its terms.[53] HFL did not even utilize the protective order procedures or file these papers under seal.[54] Plaintiffs did not authorize HFL to disclose this privileged and confidential information.[55]

As discussed above, Plaintiffs contend that they terminated HFL and attorney Scott Hendler for good cause, and that they had compelling reasons to do so. But Plaintiffs will be required to use privileged and confidential information to defend against HFL's proposed

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[52] *See* Puckett Declaration, Exh. A at ¶32; Exh. G, Plaintiffs' Response to City of Austin Request for Production No. 17.

[53] *See* First Amended Motions for Leave, -655 Case [Dkt. 43 at p.2, 4], -009 Case [Dkt. 32 at p. 2, 4]; First Amended Declarations of Scott M. Hendler, -655 Case [Dkt. 43-1 at ¶3-6], -009 Case [Dkt. 32-1 at ¶3-6]; proposed First Amended Pleas in Intervention, -655 Case [Dkt. 43-2 at ¶¶5-7, ¶10], -009 Case [Dkt 32-2 at ¶¶5-7, ¶10].

[54] HFL's unauthorized disclosures of Plaintiffs' privileged and confidential information is troubling in light of HFL's ongoing fiduciary responsibilities. "Certain privileges and duties applicable to an attorney client relationship . . . continue after the relationship's termination. The general rule is that confidential information received during a fiduciary relationship may not be used or disclosed to the detriment of the one from who the information is obtained, even after termination of the relationship." *Jetall Cos. v. Hoover Slovacek LLP*, 2022 Tex App. LEXIS 2010 at *17, 2022 WL 906218 (Tex. App.—Houston[14th] March 29, 2022) (internal citations omitted). *See also Owens-Corning Fiberglas Corp. v. Caldwell*, 818 S.W.2d 749, 751-52 (Tex. 1991); *Md. Am. Gen. Ins. Co. v. Blackmon*, 639 S.W.2d 455, 458 (Tex. 1982); *Bigham v. Southeast Tex. Envtl., LLC*, 458 S.W.3d 650, 662-63 (Tex. App.—Houston[14th] 2015).

[55] *See* Puckett Declaration, Exh. A at ¶32.

intervention claim, and to assert their counterclaims for professional negligence, breach of contract, and breach of fiduciary duty.[56] This would be highly prejudicial to Plaintiffs,[57] and this is precisely why HFL's proposed intervention claim should not go forward at this time. *See, e.g., Lake Eugenie Lan & Dev., Inc. v. BP Exploration & Prod.*, 546 Fed. Appx. 502, 506 (5th Cir. 2013) (affirming denial of intervention under FRCP 24 because proposed intervention claims, which dealt with hypothetical future settlement distribution, were not ripe). *See also Wal-Mart*, 834 F.3d at 565; *Sierra Club*, 18 F.3d at 1205; *McDonald v. E.J. Lavino Co.*, 430 F.2d at 1074.

B. The Court Lacks Jurisdiction Over the Proposed Intervention Claim

Under unambiguous U.S. Supreme Court precedent, when a proposed intervenor seeks relief that is different than the relief sought by the parties to an existing lawsuit, the Court must have an independent basis for Article III jurisdiction over the proposed intervention claim. *See Town of Chester*, 581 U.S. at 439-40. *See also Russell*, 2020 U.S. Dist. LEXIS 215333 at *11; *Defense Distributed*, 2018 U.S. Dist. LEXIS 126388 at *9-10. This rule applies to HFL's proposed intervention because HFL seeks relief that is different than the relief sought by Plaintiffs in this lawsuit. Plaintiffs seek a judgment for money damages against Defendants City of Austin, Gutierrez and Serrato on Plaintiffs' claim for wrongful death under 42 U.S.C. §1983.[58] HFL's proposed intervention claim, by contrast, seeks to assert HFL's alleged rights arising under Texas contract law.[59] This Court simply does not have subject matter jurisdiction over HFL's proposed state law "Claim" against non-diverse parties.

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[56] *See* Puckett Declaration, Exh. A at ¶31.
[57] *See id.* at ¶31.
[58] *See* First Amended Complaints, -655 Case [Dkt. 26 at ¶¶93-98], -009 Case [Dkt. 12 at ¶¶95-101].
[59] *See* proposed First Amended Pleas in Intervention, -655 Case [Dkt. 43-2 at ¶¶5-13 and Prayer], -009 Case [Dkt. 32-2 at ¶¶5-13 and Prayer]. HFL's proposed pleadings would assert one generic "Claim" that depends on HFL's alleged contract rights; but HFL never alleges that Plaintiffs have actually breached the agreement. Instead, HFL's pleading seeks relief in some future hypothetical scenarios that may or may not ever come to pass. *See id.* at ¶¶12-13. The fact that HFL's proposed

First, the Court does not have federal question jurisdiction over HFL's proposed intervention claim because a claim to enforce state law contract rights does not "aris[e] under the Constitution, laws, or treaties of the United States." *See* 28 U.S.C. §1331. *See also Box v. PetroTel, Inc.*, 33 F.4th 195, 202 (5th Cir. 2022). *See also Gunn v. Minton*, 568 U.S. 251, 257-65 (2013); *Singh v. Duane Morris LLP*, 538 F.3d 334, 337-40 (5th Cir. 2008).

Second, the Court does not have diversity jurisdiction over HFL's proposed intervention claim because HFL and Plaintiffs are all citizens of Texas.[60] *See* 28 U.S.C. §1332. *See also Carden v. Arkoma Assocs.*, 494 U.S. 185, 187 (1990) ("Since its enactment, we have interpreted the diversity statute [§1332] to require 'complete diversity' of citizenship") (citing and quoting *Strawbridge v. Curtiss*, 3 Cranch. 267 (1806)). *See also Mitchell v. Bailey*, 982 F.3d 937, 943 (5th Cir. 2020).

Third, the Court does not have supplemental jurisdiction over HFL's proposed intervention claim because HFL's claims are not "so related [to Plaintiffs' asserted claims] that they form part of the same case or controversy under Article III of the United States Constitution." *See* 28 U.S.C. §1367(a). As discussed above, HFL's proposed intervention claim arises from disputed facts that do not overlap substantially with the disputed facts involved with Plaintiffs' asserted claims under 42 U.S.C. §1983, and HFL seeks relief that is different than the relief sought by Plaintiffs. HFL's proposed intervention claim simply does not arise from the same nucleus of common facts as Plaintiffs asserted §1983 claims, and therefore the Court does not have supplemental jurisdiction over HFL's proposed intervention claim.

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intervention claim, even as plead, depends on such future hypothetical facts demonstrates quite plainly that HFL's claim is not ripe at this time. *See Lake Eugenie*, 546 Fed. Appx. at 506 ("A request for relief is unripe if it rests upon future events that may not occur as anticipated, or indeed may not occur at all.").

[60] *See* proposed First Amended Pleas in Intervention, -655 Case [Dkt. 43-2 at ¶¶1-4], -009 Case [Dkt. 32-2 at ¶¶1-4].

Courts within the Fifth Circuit have frequently denied intervention to a terminated contingent-fee lawyer who cannot establish federal jurisdiction over the proposed intervention claim. *See, e.g. Samuels v. Twin City*, 602 Fed. Appx. 209, 210-11 (5th Cir. 2015) (affirming district court's denial of attorney's motion to intervene due to lack of jurisdiction); *Griffin v. Lee*, 621 F.3d 380, 388 (5th Cir. 2010) (reversing decision to permit attorney intervention where district court lacked diversity jurisdiction over the intervention claim); *Patterson v. Corvel Corp.*, 2021 U.S. Dist. LEXIS 168456 at *5-7, Case No. 21-cv-1305 (W.D. La. Aug. 12, 2021) (denying attorney's intervention for lack of diversity jurisdiction); *Causey v. State Farm Section I*, 2018 U.S. Dist. LEXIS 99855 at *5-7, 2018 WL 2980066 (E.D. La. 2018) (same); *Tolliver v. U-Haul Co.*, 2017 U.S. Dist. LEXIS 221223 at *3-4, Case No. 09-cv-313 (W.D. La. June 8, 2017) (same). When "[a]n attorney who has formerly represented the plaintiff and intervenes for recovery of attorney's fees from the underlying suit . . . [s]uch claims are not entitled to supplemental jurisdiction under 28 U.S.C. §1367 and the claim must independently satisfy the requirements for federal diversity jurisdiction under 28 U.S.C. §1332." *Tolliver*, 2017 U.S. Dist. LEXIS 221223 at *3-4. *See also Samuels*, 602 Fed. Appx. at 210-11; *Griffin*, 621 F.3d at 388.[61]

C. HFL Has Not Met the Requirements for Intervention Under FRCP 24(a)(2)

1. HFL Does Not Have an Interest in the Property or Transaction That is the Subject of This Litigation

HFL does not have an interest in the property or transaction that is the subject of this litigation, as required by FRCP 24(a)(2), for two independent reasons.

First, HFL's alleged contractual charging lien is prohibited by the Texas rules of attorney ethics, and any such lien is void under Texas law. HFL's proposed intervention claim is predicated on its alleged right to enforce a "contractually agreed to charging lien" on the

[61] In addition to the reasons set forth here, the Court also lacks Article III jurisdiction because HFL's proposed intervention claim is not ripe, as discussed in Section IV(A), *supra.*

proceeds of a recovery in the instant action, which HFL asserts arises under Texas common law.[62] HFL significantly misunderstands the applicable law. Texas common law recognizes an attorney *retaining* lien over property that actually comes into the attorney's possession, but Texas law *does not* allow an attorney to hold a charging lien over the subject matter of a client's lawsuit or the future proceeds of a client's lawsuit.[63] None of the Texas cases cited by HFL in its amended motion (at pp. 4-5) authorize an attorney "charging lien" at all. Instead, each of HFL's cited cases recognize only an attorney *retaining* lien on property actually in possession of the attorney.[64] Indeed, the Texas Commission on Professional Ethics issued an opinion in 2011 holding that the Texas rules of ethics strictly prohibit an attorney from obtaining a contractual charging lien from a client.[65] In its proposed First Amended Pleas in Intervention, HFL unilaterally attempts to rewrite the language of the contingent fee agreement[66] by purporting to disclaim any charging lien in the subject matter of Plaintiffs' lawsuits (as opposed to the future

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[62] *See* -655 Case [Dkt. 43 at 4], -009 Case [Dkt. 32 at 4]. As discussed above, HFL amended its motion to clarify the basis for its intervention, and the amended motion did not include any alternative basis for intervention apart from the alleged charging lien.

[63] *See Casey v. March*, 30 Tex. 180 (1867) (holding that in Texas, there is no common law or statutory lien on a judgment, and a common law lien on the proceeds of the judgment requires that those proceeds be in the attorney's possession). *See also Thomson* v. *Findlater Hardware Co.,* 205 S.W. 831, 832 (Tex. 1918) (quoting MECHEM ON AGENCY).

[64] *See United States v. Betancourt*, 2005 U.S. Dist. LEXIS 40483 at *8-9, 2005 WL 3348908 (S.D. Tex. Dec. 8, 2005) (distinguishing Texas common law retaining lien and holding that a charging lien for attorney services does not exist under Texas common law); *Rotella v. Cutting*, 2011 Tex. App. LEXIS 7116 at *12-13, 2011 WL 3836456 (Tex. App.—Fort Worth Aug. 31, 2011) (holding that no "common law lien" or "possessory lien" existed because the attorney never possessed the funds at issue); *Tarrant Cty. Hosp. Dist. v. Jones*, 664 S.W.2d 191, 195-96 (Tex. App.—Fort Worth 1984) (recognizing an attorney lien "on money *collected by him* for his client") (emphasis added, citing *Thomson v. Findlater Hardware Co.*, 156 S.W. 301 (Tex. Civ. App.—Austin 1913). As *Thomson* makes clear, "[w]hile an attorney has a lien on money collected by him for his client, he has no such lien for the debt in the hands of the debtor before such money has been collected." *Thomson*, 156 S.W.3d at 303.

[65] *See* Tex. Comm. On Professional Ethics, Op. 610 (2011) (citing Professional Ethics Committee Op. 395 (May 1979, corrected June 1980) and Op. 411 (January 1984)).

[66] *See* -655 Case [Dkt. 43-1 at ¶5], -009 Case [Dkt. 32-1 at ¶5] (quoting the agreement to establish a "charging lien *immediately applicable to this matter* and any and all recoveries . . ." (emphasis added)).

proceeds of the lawsuits).[67] HFL's unilateral attempt to rewrite the agreement is properly viewed as a request to reform the contract, and it nonetheless would fail to save the validity of HFL's alleged charging lien.[68]

Second, HFL fails to meet the requirements of FRCP 24(a)(2) because HFL has, at most, an indirect interest in the subject of this litigation. "The interest required to intervene as of right is a 'direct' interest. By definition, an interest is not direct when it is contingent on the outcome of a subsequent lawsuit." *Ross v. Marshall*, 456 F.3d 442, 443-44 (5th Cir. 2006). Here, HFL's alleged interest in this lawsuit is contingent on numerous disputed facts that require resolution apart from this lawsuit, such as whether Plaintiffs terminated HFL for cause, whether HFL's contingent fee agreement was void when made, and whether HFL's collection of a full contingent fee would be unconscionable. Thus, HFL's interest in the subject of this litigation is indirect (at best), which is insufficient to meet HFL's burden to show entitlement to intervene under FRCP 24(a)(2). *See Ross*, 456 F.3d at 443-44. *See also Wal-Mart*, 834 F.3d at 568 ("[A]n economic interest is not sufficiently direct when the intervenor's interest will only be vindicated be a separate legal action . . ."); *Citadel Recovery Servs., LLC v. T.J. Sutton Enters., LLC*, 2021 U.S. Dist. LEXIS 229250 at *17-18, 2021 WL 5505533 (E.D. La. March 15, 2021); *Catlin Specialty Ins. Co. v. Ward*, 2020 U.S. Dist. LEXIS 250696 at *3, Case No. 1:20-cv-92 (N.D. Miss. Aug. 24, 2020).

2. Disposition of This Case Will Not Impair HFL's Rights or Interests Because HFL Has Other Adequate Ways to Enforce Its Rights

HFL has not met its burden to show that disposition of this case will impair its alleged legal rights under the contingent fee agreement. HFL's amended motion and supporting

[67] *See*-655 Case [Dkt. 43-2 at 4 fn.1], -009 Case [Dkt. 32-2 at 4 fn.1].
[68] Under Texas law, the question of whether a contingent fee contract is unconscionable or against public policy is adjudged from the time the contract is made. *See Hoover Slovacek*, 206 S.W. 3d at 562.

documents assert nothing more than hypothetical future scenarios involving a hypothetical settlement that may be structured in hypothetical ways and that might, in theory, impair HFL's rights in the future in some unspecified way.[69] HFL's speculation and conjecture are insufficient to meet HFL's burden under FRCP 24(a).

The question of whether HFL's interests will be impaired by resolution of this lawsuit "focuses on practical consequences."[70] Unless HFL "can show actual collusion between his clients and other parties or an actual attempt to deny him his fee . . . the refusal of intervention cannot, as a matter of law, impair or impede his ability to protect his interest."[71] Here, HFL has sufficient ways, apart from intervention in these cases, to protect its alleged contractual rights. HFL "may file its own lawsuit to collect its purported debt, and nothing decided in this case will operate to estop it from fully pressing its claims."[72] Indeed, HFL has *already* filed at least two separate lawsuits, against Plaintiffs' replacement lawyers, seeking to recover HFL's alleged damages as a result of HFL's termination by Plaintiffs. HFL apparently has no qualms seeking to enforce its alleged contractual rights in forums other than intervention in the -655 and -009 Cases. HFL has not shown, apart from pure speculation, that its alleged rights will be impaired by resolution of this lawsuit.

D. The Proposed Intervention Claim Would Create an Unnecessary Sideshow That Would Distract From Discovery and Litigation of Plaintiffs' Originally Filed Claims

If HFL is permitted to intervene and allowed immediately to litigate its proposed intervention claim, it will create a sideshow distraction that will complicate litigation of this case.

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[69] *See* -655 Case [Dkt. 43 at 5, Dkt. 43-1 at ¶12, Dkt. 43-2 at ¶¶12-13], -009 Case [Dkt. 32 at 5, Dkt. 32-1 at ¶12, Dkt. 32-2 at ¶¶12-13].
[70] *Adam Joseph Res. (M) Sdn. Bhd. v. CNA Metals Ltd.*, 919 F.3d 856, 867 (5th Cir. 2019).
[71] *Valley Ranch Dev. Co. v. Fed. Deposit Ins. Corp.*, 960 F.2d 550, 556 (5th Cir. 1992).
[72] *Alam v. Fannie Mae*, 2007 U.S. Dist. LEXIS 92209, at *12, 2007 WL 4411544 (S.D. Tex. Dec. 12, 2007).

As one relevant example, several of the lawyers involved in this case likely will be fact witnesses in the dispute between Plaintiffs and HFL, potentially subject to discovery and deposition.[73] As previously discussed, Plaintiffs would be required to use otherwise privileged information to defend against HFL's intervention claim. These and other similar issues potentially would turn this already complicated, multi-party dispute into an unmanageable three-ring circus.

If the Court is inclined to permit HFL's intervention in these cases at all, it has the authority to sever and stay the intervention claim and/or enter other appropriate orders to avoid complication and distraction from the underlying lawsuit.[74] At a minimum, Plaintiffs request that the Court: (1) sever HFL's proposed intervention claim from the pending cases, (2) stay HFL's proposed intervention claim until the conclusion of the pending cases, and (3) order that HFL has no discovery rights or other procedural rights with respect to litigation of Plaintiff's claims against the party Defendants to the -655 and -009 Cases.

V. CONCLUSION

For the foregoing reasons, Plaintiffs ask the Court to deny HFL's First Amended Motion for Leave to Intervene as of Right.

[73] *See* Puckett Declaration, Exh. A at ¶33.

[74] *See, e.g. Campbell Harrison & Dagley, L.L.P. v. PBL Multi-Strategy Fund, L.P.*, 744 F. App'x 192, 194 (5th Cir. 2018); *Texas v. Real Parties*, 259 F.3d 387, 390 (5th Cir. 2001); *Desilva v. Taylor*, 2022 U.S. Dist. LEXIS 171318 at *3-4, Case No. 1:21-cv-00129-RP (W.D. Tex. Sep. 22, 2022); *Slim v. Abuzaid*, 2018 U.S. Dist. LEXIS 155488, at *2-3, Case No. 3:16-CV-1769-S-BH (N.D. Tex. Aug. 9, 2018); *Saacks v. Privilege Underwriters Reciprocal Exch.*, 2017 U.S. Dist. LEXIS 14531, at *11-13, Case No. 16-1149 (E.D. La. Feb. 2, 2017). *Bibles v. City of Irving*, 2009 U.S. Dist. LEXIS 67462, at *17, Case No. 3:08-CV-1795-M (N.D. Tex. July 28, 2009).

Dated: July 10, 2023

/s/ Donald Puckett
Donald Puckett (Texas Bar No. 24013358)
Clifford Chad Henson (Texas Bar No. 24087711)
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Donald Puckett
Donald Puckett

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. **CITY OF AUSTIN** *Defendant*.	§	**Case No. 1:22-cv-00655-RP** **JURY TRIAL REQUESTED**
ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. **LUIS SERRATO**, and **GABRIEL GUTIERREZ** *Defendants*.	§	**Case No. 1:23-cv-00009-RP** **JURY TRIAL REQUESTED**

DECLARATION OF ATTORNEY DONALD PUCKETT
IN SUPPORT OF PLAINTIFFS' RESPONSE TO HENDLER FLORES LAW, PLLC'S FIRST AMENDED MOTION FOR LEAVE TO INTERVENE AS OF RIGHT

I, Donald Puckett, hereby declare as follows:

1. I am an adult over the age of 18 and I am otherwise competent to make this Declaration. I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, I would provide the same testimony under oath.

2. Currently I am counsel of record and lead attorney-in-charge representing Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera (aka Elizabeth Gonzales) (collectively "Plaintiffs") in each of the above-styled lawsuits, which I will refer to herein as the -655 Case and the -009 Case.

3. I have been licensed to practice law by the State Bar of Texas since November, 1999. Following my graduation from the University of Texas School of Law, I served as a law clerk to the Hon. Jon Phipps McCalla, United States District Judge for the Western District of Tennessee. Since 2000, I have practiced law in Dallas, Texas, and I have maintained a national litigation practice consisting of patent infringement cases and other complex commercial cases. I was selected as a Barrister member of the Barbara M.G. Lynn IP Inn of Court in Dallas from 2013 through 2016; and I was promoted to a Master member of the Lynn Inn of Court from 2016 through 2022. I was named a Texas Super Lawyer for Intellectual Property Litigation each year from 2014 through 2020. I was named to the IAM Patent 1000 list of the world's leading patent professionals each year from 2015 through 2018.

4. Following a brief sabbatical from practicing law in 2021, I decided to move my litigation career in a different direction with the intention of handling cases in other practice areas. On or about March 14, 2022, I began working as an employee attorney of the Austin law firm Hendler Flores Law, PLLC ("HFL"). I joined HFL with the intention of becoming substantially involved with litigating the firm's docket of civil rights cases. While I was an employee of HFL, I made litigation appearances in approximately eight of HFL's federal civil

rights (Section 1983) cases, all pending in the United States District Court for the Western District of Texas.

5. On July 6, 2022, Plaintiffs filed a lawsuit arising from the death of their son Alex Gonzales, Jr., with Plaintiffs asserting a wrongful death claim under 42 U.S.C. §1983 against the City of Austin (the "-655 Case"). Plaintiffs were represented by HFL at the time they filed this lawsuit. Attorney Scott Hendler and I were the two attorneys of record for Plaintiffs at the time the -655 Case was filed.

6. I personally performed substantially all of the discovery work on the -655 Case while I was an employee of HFL. On August 4, 2022, Plaintiffs served requests for production of documents on the City of Austin, and I was the attorney that signed and served the discovery requests. On September 27, 2022, I personally took the deposition of APD Officer Gabrielle Gutierrez in the -655 Case. On October 13, 2022, I personally took the deposition of Officer Brian Nenno in the -655 Case. On November 1, 2022, I personally took the deposition of Officer Luis Serrato in the -655 Case. In December, 2022, I personally was tasked with the responsibility of drafting and filing a second lawsuit complaint for Plaintiffs against Defendant Gutierrez and Defendant Serrato, with an internal deadline for filing by January 5, 2023.

7. On December 28, 2022, I had a Zoom meeting with Scott M. Hendler, who is the founder and CEO of the HFL law firm. I had requested the meeting to discuss the year-end bonus that I had been promised in writing by Hendler when I was hired by HFL earlier that year. I anticipated that the meeting might become contentious, so I captured a video recording of the meeting in real-time. I did not inform Hendler (or HFL attorney Stephen Demik, who also was present) that I was recording the meeting, and legally I was not required to do so under Texas law. Hendler was the host for this Zoom meeting, so I used the built-in Windows screen recorder by pressing [Windows Key + ALT + R] on my keyboard. This allowed me to use the Windows

screen-record tool to capture a video recording of the meeting in real-time, which was stored on my local hard drive in the .mp4 file format. I have maintained the original and unaltered file on my hard drive since it was captured, with all metadata intact, and I have made backup archival copies of the original .mp4 file. I subsequently provided a copy of the video recording and a transcript to HFL and its outside employment law attorney (Ms. Jennifer Ward) in March 2023.

8. During the December 28, 2022 Zoom meeting, a dispute ensued regarding my year-end bonus compensation. I learned for the first time during this meeting that I would not be paid any year-end bonus. I was told that the firm could not afford to pay a bonus because the firm had not been profitable for the year. When I tried to initiate a conversation about potential non-cash bonus alternatives in lieu of a cash bonus, a heated argument ensued between myself and Hendler.

9. During the heated argument, Hendler multiple times attempted to mischaracterize my statements as a resignation, even though I insisted repeatedly that I had not offered a resignation, and I made clear that I did not intend to turn in a resignation that day. When I asked for some time to think about things, Hendler told me I was not allowed to take any time to think about it, that he had decided we needed to part ways that very day, and that I should consider this meeting to be my termination. Throughout all of this discussion, I repeatedly insisted that I had not resigned and I was not resigning.

10. Within less than 30 minutes following the conclusion of the December 28 meeting, my work email address was disabled and my access to HFL's electronic systems and litigation tools was disconnected. The next day, on December 29, 2022, HFL filed motions for my withdrawal as attorney of record in every HFL case in which I previously had made an appearance.

11. On December 29 and December 30, I sent emails to HFL inquiring about the status of my employment and insisting yet again that I had not tendered a resignation. HFL did not immediately respond to my emails, and I received no communication from Hendler or HFL management after the December 28 meeting until the afternoon of December 30, 2022, when I received a formal end-of-employment letter from Hendler sent via email.

12. Hendler's December 30, 2022, letter stated that HFL had retained and consulted with outside employment law counsel (Austin attorney Jennifer D. Ward). It further stated that HFL allegedly had accepted my resignation at the December 28 Zoom meeting. Hendler's recitation of facts in the letter was grossly inaccurate, as plainly demonstrated by the video recording of the meeting—although Hendler did not know that the video existed at the time. Hendler's letter inaccurately declared that I had stated an unambiguous intention to resign on December 31, 2022; but the video shows that I repeatedly insisted I was not resigning at all, and at one point I stated that I *certainly would not* resign prior to December 31.

13. On January 5, 2023, I received a formal letter (via email) from attorney Jennifer D. Ward. Ms. Ward's letter confirmed that she had been retained as HFL's outside employment law attorney with respect to my employment separation from HFL. Ms. Ward's letter instructed me to direct all future communications to her office, and it directed me to cease and desist further contact with HFL employees. I have provided an excerpt of the letter below:

January 5, 2023

VIA E-MAIL

Mr. Donald Puckett
Donald.Puckett@outlook.com

Re: Letter of Representation and Reminder of Obligations

Dear Mr. Puckett:

As you were informed by my client via email on December 30, 2022, this firm has been retained by Scott Hendler and Hendler Flores Law ("the Firm") to represent them related to your former employment at that firm.

As you have already been instructed, please direct all future communications to my office at the above address. **You should have no further contact directly with firm representatives regarding your employment or separation**.

I have reviewed a series of emails you directed to firm representatives in the last few days and offer the following response:

1. Your separation has been processed as a resignation effective December 28, 2022. You

14. Prior to the December 28, 2022 Zoom meeting, I was the attorney in charge of day-to-day litigation responsibilities for each of HFL's then-pending federal Section 1983 civil rights lawsuits (approximately eight total cases, including this -655 Case). I personally was the attorney responsible for keeping the task list for each case, for managing discovery, for developing litigation and trial strategies, and handling all day-to-day tasks. Because other HFL attorneys were involved in other cases with impending trial dates, for several months I had been managing all these responsibilities in HFL's Section 1983 cases with little assistance from or collaboration with other HFL attorneys.

15. I would never, under any circumstances, suddenly or unexpectedly resign from a law firm litigation position in which I presently was handling substantial client responsibilities in ongoing litigation. Without some extraordinary justification, I would consider doing so a violation of an attorney's ethical and professional obligations. Hypothetically, even if my law firm employer stopped paying me altogether, or if the firm suddenly dissolved—whatever the circumstance—I would nonetheless feel professionally obligated to take reasonable steps to

make a professional handoff of my case responsibilities to another attorney and/or make sure that clients were not prejudiced under the circumstances.

16. Mr. Hendler has told the Court in previous filings that I "abruptly resigned" from my employment with HFL,[1] and I take great umbrage at any such suggestion. I was suddenly and involuntarily terminated without warning from my employment with HFL, and any suggestion to the contrary is simply not true. The thought of suddenly resigning and walking away from my job at HFL without any professional handoff of the cases literally never occurred to me—not before, not during, and not until several days after the December 28 meeting in which I was unexpectedly terminated from my job at HFL.

17. Much to my surprise, no one from HFL ever contacted me to request my assistance with transitioning any case responsibilities to a new HFL attorney. No one inquired about my task lists, about case strategies, or about my attorney work product. By disconnecting my email and computer access on December 28, HFL precluded me from taking any steps toward a professional transition on my own. After receiving Ms. Ward's cease and desist letter on January 5, 2023, I did not feel comfortable initiating communications with any HFL attorneys or employees about ongoing cases at all.

18. On or about December 29, 2022, I contacted Plaintiffs in this lawsuit to personally inform them that I had been terminated from my job at HFL and that I was no longer their lawyer. I informed them that I was no longer responsible for drafting and filing a second lawsuit complaint for them, and I urged them to take steps to ensure that HFL would file the second lawsuit on or before January 5, 2023. I took these steps in an effort to ensure, as best I could under the circumstances, that Plaintiffs were not prejudiced by my abrupt termination from

[1] *See, e.g.* -655 Case [Dkt. 29 at 1 and fn. 1]; -009 Case [Dkt. 16 at 1 and fn. 1].

HFL. After I received Ms. Ward's cease and desist letter on January 5, 2023, I no longer felt comfortable contacting HFL's clients that I previously had represented, even to provide case-related information. Accordingly, I did not reach out to initiate contact with any HFL client other than Plaintiffs, in any way.

19. On or about January 4, 2023, HFL filed the -009 Case on behalf of Plaintiffs. No one from HFL asked for my thoughts or assistance related to the drafting of the original complaint in what would become the -009 Case.

20. In or about February 2023, Alex Gonzales, Sr. and Elizabeth Herrera Gonzales began reaching out to contact me to inquire whether they could hire me as replacement counsel for HFL and Hendler in the pending -655 Case and -009 Case. I declined to advise them with respect to their contractual relationship with HFL and/or their termination rights under their HFL agreement because I had a conflict of interest. Plaintiffs asked me to refer them to an attorney who could advise them on these issues, and I referred them to attorney Michael Marconi for that purpose.

21. On or about February 20, 2023, I joined the Devlin Law Firm ("DLF") as a Partner. DLF is a Delaware-based law firm that specializes in intellectual property litigation. DLF maintains a substantial docket of patent infringement cases in Texas federal district courts, including the Western District of Texas. As a firm, DLF also has substantial experience handling other types of litigation matters in federal court, including some limited experience successfully handling federal Section 1983 cases on a *pro bono* basis. *See, e.g. Brathwaite v. Warden Perry Phelps*, Case No. 1:10-cv-00646-SB, in the United States District Court for the District of Delaware.

22. On March 24, 2023, Mr. Marconi sent a letter to HFL and Scott Hendler informing them that Plaintiffs had chosen to terminate their attorney / client relationship with

HFL regarding their pending civil lawsuits (the -655 Case and the -009 Case). Mr. Marconi's letter stated that Plaintiffs had retained DLF and me as replacement counsel in these lawsuits. The letter further instructed HFL to forward the clients' file to DLF and to withdraw from the pending cases no later than April 7, 2023. A true and correct copy of Mr. Marconi's March 24, 2023 letter to HFL is submitted as Exhibit B to Plaintiffs' Response to HFL's First Amended Motion for Leave.

23. Within days of filing notices of appearance as replacement counsel in these lawsuits, DLF filed amended complaints for Plaintiffs in both the -655 Case and -009 Case. The amended complaints corrected procedural errors in the original complaints that had been filed by HFL. First, the amended complaints removed any reference to Alex Gonzales, Sr.'s capacity as administrator of the estate of Alex Gonzales, Jr. because Mr. Gonzales, Sr. has never been appointed administrator of his son's estate. Second, the amended complaints added wrongful death claims on behalf of minor child Z.A.G. in order to avoid any potential objections in light of the Texas "one action" rule for wrongful death lawsuits. Shortly after filing the amended complaints, DLF filed (on behalf of Plaintiffs) a Motion for Appointment of Guardian Ad Litem in an effort to ensure that the interests of Z.A.G. are adequately protected in these lawsuits.

24. Even though HLF received Mr. Marconi's termination letter on March 24, 2023, HFL did not begin transferring the clients' file to DLF until mid-April. Once I received most of HFL's client files and reviewed them in late April, 2023, I came to learn that HFL had performed no substantial work on the -655 Case after I was terminated on December 28, 2022, and that HFL had performed no substantial work on the -009 Case other than filing the original complaint. Even though important case-related events had occurred in December 2022 and January 2023, HFL had not even asked the City of Austin to supplement its document production to include important case-related documents from the events that had occurred during those

months, such as APD's completion of its internal affairs investigation and decision not to discipline Officer Gutierrez or Officer Serrato.

25. On May 23, 2023, I made a formal request to the City of Austin that it supplement its document production in the -655 Case to include investigative materials and other documents related to the events that had transpired in or after December 2022. My request for supplementation was based on requests for production of documents that I previously had served in the -655 Case when I had been an attorney employee of HFL. On June 23, 2023, in response to my request for supplementation, the City of Austin produced an additional 1,600 pages of documents plus additional videos and audio recordings.

26. Almost immediately after HFL and Hendler received Mr. Marconi's March 24, 2023 termination letter, HFL began taking a series of retaliatory steps against Plaintiffs and their new attorneys. On March 27, 2023, HFL filed a Texas state court lawsuit asserting one claim of tortious interference with contract against me individually and against DLF and the Marconi Law Firm. A true and correct copy of HFL's state court original petition is submitted as Exhibit C to Plaintiffs' Response to HFL's First Amended Motion for Leave. Each of the defendants in this lawsuit filed answers on or about June 5, 2023. True and correct copies of these answers to the lawsuit are submitted as Exhibit D to Plaintiffs' Response to HFL's First Amended Motion for Leave. Unbeknownst to me and the other defendants to that lawsuit, HFL had voluntarily non-suited its state court lawsuit on June 2, 2023— the previous business day—without informing the defendants until after the answers had been filed.

27. On June 2, 2023, HFL also had filed a similar lawsuit for tortious interference—this time in federal court, naming DLF as the only defendant. A true and correct copy of HFL's original complaint in federal court is submitted as Exhibit E to Plaintiffs' Response to HFL's First Amended Motion for Leave. DLF's answer to HFL's federal lawsuit is forthcoming.

28. On May 12, 2023, HFL filed a Motion for Leave to Intervene as of Right in both the -655 Case and -009 Case. On May 23, 2023, I sent HFL and Hendler a letter pursuant to Fed. R. Civ. P. 11 informing them that HFL's assertion of contractual attorney lien rights was frivolous and sanctionable in light of State Bar of Texas Professional Ethics Committee Opinion No. 610, which unambiguously holds: "Under the Texas Disciplinary Rules of Professional Conduct, a lawyer representing a client in litigation may not acquire, by agreement with his client, a lien upon the subject matter of the litigation as a means of securing payment of the lawyer's fee with respect to the litigation." A true and correct copy of this Rule 11 letter is submitted as Exhibit F to Plaintiffs' Response to HFL's First Amended Motion for Leave.

29. HFL never responded in writing to the May 23 Rule 11 letter. Instead, on June 12, 2023, HFL filed a First Amended Motion for Leave to Intervene as of Right, supported by a First Amended Declaration of Scott Hendler and a proposed First Amended Plea in Intervention.

30. Plaintiffs dispute HFL's contention, made in the First Amended Motion for Leave and supporting papers, that Plaintiffs terminated HFL and attorney Scott Hendler without cause. To the contrary, Plaintiffs intend to defend against any claim HFL files against them by showing with evidence that Plaintiffs had sufficient cause and compelling reasons to fire HFL and Hendler, and to retain substitute counsel. After the -655 Case and -009 Case are concluded, Plaintiffs expect to file a lawsuit and assert claims against HFL for professional negligence, breach of contract, and breach of fiduciary duty arising from HFL's former representation of Plaintiffs in these lawsuits.

31. In order to defend against HFL's proposed intervention claim and assert their own claims against HFL, Plaintiffs will be required to rely upon otherwise privileged information regarding Hendler's and HFL's acts and/or omissions while HFL represented Plaintiffs in these pending lawsuits. As the current attorney of record for Plaintiffs, I am firmly of the opinion that

forcing Plaintiffs to litigate their disputes with HFL now, in this lawsuit, will be highly prejudicial to Plaintiffs. I cannot further discuss the factual basis for my opinion without revealing Plaintiffs privileged attorney / client information.

32. Plaintiffs contend that the terms of their contingent fee agreement with HFL are privileged and confidential. In the -655 Case, Defendant City of Austin served a request for production of documents on Plaintiffs that sought "[t]he attorneys' fee agreement between you and your legal counsel relating to this Litigation." Plaintiffs, while they were represented by HFL, objected to this request for production on the basis of attorney-client privilege and attorney work-product privilege. A true and correct copy of Plaintiff's response and objections to City of Austin Request for Production No. 17 (with redaction of other unrelated material) is submitted as Exhibit G to Plaintiffs' Response to HFL's First Amended Motion for Leave. HFL's motion for leave to intervene in the -655 and -009 Cases, however, provides numerous disclosures of the terms of the contingent fee agreement. Plaintiffs did not and have not authorized HFL to make these disclosures of Plaintiffs' privileged and confidential information.

33. Several of the attorney participants in the -655 Case and -009 Case are likely to be material witnesses in Plaintiffs' dispute with HFL. At a minimum, attorney Jeff Edwards and attorney Gray Laird (in addition to myself) are likely to be material witnesses in the dispute over whether Plaintiffs terminated Hendler and HFL for good cause, given each person's personal knowledge regarding Hendler's and HFL's acts and omissions during the time HFL represented Plaintiffs in the -655 and -009 Cases.

34. I have provided the declarations above by reference to non-privileged information only, and I have omitted many relevant facts and important details because further discussion of these events would require disclosure of Plaintiffs' privileged and confidential information related to the pending -655 Case and -009 Case.

35. I declare under penalty of perjury that the foregoing statements and declarations are true and correct to the best of my personal knowledge.

This Sworn Declaration is made in Dallas, Texas on July 10, 2023, by:



Donald Puckett

EXHIBIT B

THE MARCONI FIRM

9288 Huntington Square
North Richland Hills, Texas 76108-9475

Telephone: (214) 682-3592
Facsimile: (817) 479-2210
Email: mmarconi416@icloud.com

March 24, 2023

Mr. Scott M. Hendler
Hendler & Flores Law, PLLC
901 S. Mopac Expressway
Building 1, Suite 300
Austin, Texas 78746
shandler@hendlerlaw.com

Re: *Alex Gonzales, Sr. and Elizabeth Herrera v. City of Austin*, Case No. 1:22-cv-655, in the United States District Court for the Western District of Texas (Austin Division); and

Alex Gonzalez, Sr. (individually and as administrator) and Elizabeth Herrera (a/k/a Elizabeth Gonzalez) v. Luis Serrano, Gabriel Gutierrez and the City of Austin, Case No. 1:23-cv—9, in the United States District Court for the Western District of Texas (Austin Division).

Dear Mr. Hendler,

The undersigned represents Alex Gonzales, Sr., and Elizabeth Herrera in connection with their decision to transfer representation of them in the above referenced matters from Hendler & Flores Law, PLLC and Webber Law to the Devlin Law Firm LLC.

To ensure a smooth transition of the cases, my clients have agreed that the effective date for the termination of your firm's representation of them should be April 7, 2023. The Devlin Law Firm will be filing a notice of appearance in the above referenced cases no later than March 27, 2023. I would ask that you stand down from any work on these cases that is not driven by imminent deadlines and that you instead allow the Devlin Law Firm to take the lead and make any decisions regarding the pending litigation. Additionally, I would request that you prepare to promptly transfer all your litigation files and work product relating to the above referenced cases and that you create a summary report identifying all pending litigation deadlines, tasks, or information of which substitute counsel should be aware. Finally, I would ask that you cooperate with the Devlin Law Firm to ensure the smooth transfer of responsibility for the above referenced cases and that you prepare a formal motion for substitution of counsel after the Devlin Law Firm confirms receipt of all materials necessary for the substitution of counsel, but in no later than April 7, 2023.

If you have any questions, you should feel free to contact me via email as I am out of the country until April 3, 2023.

Sincerely,

Michael Marconi

Michael Marconi

cc. Rebecca Webber, Esq

.

EXHIBIT C

3/27/2023 9:31 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-23-001636
Rosa Oneal

D-1-GN-23-001636

CAUSE NO. _____

HENDLER FLORES LAW, PLLC, *Plaintiff*	§	**IN THE DISTRICT COURT OF**
v.	§	**TRAVIS COUNTY, TEXAS**
GORDIE DONALD PUCKETT, DEVLINE LAW FIRM, LLC, AND THE MARCONI LAW FIRM, *Defendants*	§	455TH, DISTRICT COURT **_____ JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

Hendler Flores Law, PLLC, Plaintiff, files this lawsuit against Defendants Gordie Donald Puckett, Devlin Law Firm, LLC, and The Marconi Law Firm (collectively, "Defendants"), and respectfully shows this Court the following:

I. DISCOVERY LEVEL

1. Pursuant to Tex. R. Civ. P. 190.4, Plaintiff respectfully submits that discovery in this case be conducted pursuant to Level 2 Discovery Plan.

2. Plaintiff seeks monetary damages within the jurisdictional limits of this Court and non-monetary relief.

II. PARTIES

3. Plaintiff Hendler Flores Law, PLLC is a Texas Limited Liability Company whose principal place of business is in Travis County, Texas.

4. Plaintiff brings an action for tortious interference with contract against Defendants.

5. Defendant Gordie Donald Puckett is an individual residing in Texas. Mr. Puckett may be served with process at his domicile at 4309 Wingren Drive, Plano, Texas 75093, in Collin County, Texas. Plaintiff respectfully requests that citation be issued.

Copy from re:SearchTX

6. Defendant Devlin Law Firm, LLC is a limited liability company operating and doing business in Texas. Defendant Devlin Law Firm LLC may be served with process at its headquarters at 1526 Gilpin Ave., Wilmington, DE 19806. Plaintiff respectfully requests that citation be issued.

7. Defendant The Marconi Law Firm is a sole enterprise operating and doing business in Texas. Defendant The Marconi Law Firm may be served with process at its headquarters at 9284 Huntington Square # 100, North Richland Hills, Texas, 76182. Plaintiff respectfully requests that citation be issued.

III. VENUE AND JURISDICTION

8. Venue is proper in this matter pursuant to Tex. Civ. Prac. & Rem. Code §§ 15.002(a)(1) and because all or substantially all the events and omissions giving rise to the claim occurred in Travis County, Texas.

9. Plaintiff performed its contractual obligations in Travis County, Texas on behalf of the other parties to the underlying contract ("the Gonzales Clients") that is the subject of the tortious interference with contract claim.

10. Plaintiff performed its obligations in several ways, including, but not limited to, filing two legal actions in the Western District of Texas, Austin Division, on behalf of the Gonzales Clients, conducting the depositions of two witnesses involved in the shooting that is the subject of the law suits filed on behalf of the Gonzales Clients, engaging in various litigation activities on behalf the Gonzales Clients, and advancing substantial costs of litigation and other necessary expenses on behalf of the Gonzales Clients.

11. Plaintiff seeks damages within the jurisdictional limits of this Court.

12. Personal jurisdiction is proper over each Defendant in Texas.

Copy from re:SearchTX

13. The Defendants are residents and/or citizens of Texas and/or are subject to the general jurisdiction of Texas due to their continuous and systematic conduct of business in Texas.

14. Plaintiff's claims against Defendants arise out of and relate specifically to each Defendant's conduct in Texas that is the subject of this lawsuit.

IV. FACTS

15. Plaintiff, in its capacity as a law firm whose principals are licensed to practice law by the State Bar of Texas in the State of Texas, entered into an attorney contingent fee agreement to represent Alex Gonzales, Sr. and Elizabeth Herrera ("the Gonzales Clients"), individually and as representative of the estate of their deceased biological son, Alex Gonzales, Jr. in a lawsuit in the State of Texas.

16. Upon information and belief, beginning around January 2023, Defendants planned and acted in concert to tortiously interfere with Plaintiff's business relationship in connection with Plaintiff's representation of the Gonzales Clients.

17. On or about March 24-25, 2023, Defendants completed their tortious interference with Plaintiff's contractual relationship with the Gonzales Clients by willfully and intentionally persuading the Gonzales Clients to terminate Plaintiff's legal representation.

18. Plaintiff has been damaged by Defendants' actions and omissions both monetarily and personally.

19. Plaintiff reserves the right to supplement the facts of this case as provided by the Texas Rules of Civil Procedure.

V. CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH CONTRACT

20. Plaintiff incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

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21. The elements of tortious interference with a contract are: (1) the existence of a contract subject to interference; (2) the occurrence of an act of interference that was willful and intentional; (3) the act was a proximate cause of the claimant's damage; and (4) actual damage or loss occurred. *See, e.g.*, *Baty v. ProTech Ins. Agency*, 63 S.W.3d 841, 856–57 (Tex. App.—Houston [14th Dist. 2001, pet. denied) (citing *Friendswood Dev. Co. v. McDade & Co.*, 926 S.W.2d 280, 283 (Tex. 1996)).

22. Plaintiff had an existing, fully executed attorney contingent fee contract that preexisted Defendants' relationship with the Gonzales Clients that was subject to interference.

23. Defendants willfully and intentionally interfered with Plaintiff's contract, in a variety of ways, including but not limited to willfully and intentionally persuading the Gonzales Clients to terminate their attorney fee contract with Plaintiff and in fact persuaded the Gonzales Clients to terminate the contract with Plaintiff.

24. Defendants acted in concert to deliberately, willfully, and intentionally commit their acts and omissions and those acts and omissions were a proximate cause of the Gonzales Clients' decision to terminate Plaintiff's representation of the Gonzales Clients' on March 24, 2023, and of Plaintiff's damages.

25. As a result of Defendants' actions and omissions, Plaintiff has suffered, and continues to suffer, actual damages and loss.

VI. DAMAGES

26. Plaintiff repeats and re-alleges each of the allegations in the preceding paragraphs as if fully set forth herein.

27. As a direct and proximate result of the intentional and willful acts and/or omissions of the Defendants as set out above, Plaintiff suffered damages and loss. Plaintiff seeks damages in excess

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of $1,000,000.

VII. PRAYER

Plaintiff Hendler Flores Law, PLLC prays that Defendants be cited to appear and answer herein. After a trial regarding their claims, Plaintiff Hendler Flores Law, PLLC prays for an award of damages and any other relief in law or equity to which they may show themselves to be entitled.

Respectfully submitted,

THE SNELL LAW FIRM, P.L.L.C.

BY: */s/ Jason W. Snell*

Jason W. Snell
Bar No. 24013540
AnneMarie McComb
Bar No. 24109527
1615 W. 6th St., Suite A
Austin, Texas 78703
(512) 477-5291 – Telephone
(512) 477-5294 – Facsimile
firm@snellfirm.com – Email

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that Plaintiff's Original Petition was filed on March 27th, 2023, via the Court's efile system and will be served in compliance with the Texas Rules of Civil Procedure.

/s/ Jason W. Snell
Jason W. Snell

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Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jason Snell on behalf of Jason Snell
Bar No. 24013540
firm@snellfirm.com
Envelope ID: 74024608
Filing Code Description: Petition
Filing Description: PLAINTIFF'S ORIGINAL PETITION
Status as of 3/28/2023 12:18 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Snell	24013540	firm@snellfirm.com	3/27/2023 9:31:38 AM	SENT

Copy from re:SearchTX

EXHIBIT D

CAUSE NO. D-1-GN-23-001636

HENDLER FLORES LAW, PLLC,	§	
	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
GORDIE DONALD PUCKETT, DEVLINE LAW FIRM, LLC and **THE MARCONI LAW FIRM**,	§	
	§	**455th JUDICIAL DISTRICT**
	§	
	§	
Defendants.	§	

DEFENDANT PUCKETT'S PLEA TO THE JURISDICTION, SPECIAL EXCEPTIONS, AND ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

Pursuant to Tex. R. Civ. P. 83, 84 and 85, Defendant Gordie Donald Puckett (herein "Puckett" or "Defendant Puckett") files this Answer to Plaintiff's Original Petition.

PLEA TO THE JURISDICTION

1. Defendant Puckett asserts this Plea to the Jurisdiction pursuant to Tex. R. Civ. P. 85.

2. The Court lacks jurisdiction over this case due to a lack of ripeness. "Ripeness is a component of subject matter jurisdiction that focuses on a lawsuit's timing. . . [A] case must be ripe in order for the trial court to have subject matter jurisdiction . . . ." *Southwestern Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 682-83 (Tex. 2020).

3. This dispute is not ripe for judicial resolution because Plaintiff has not yet suffered any damages. Under Texas law, a lawyer with a contingent fee agreement that has been terminated by the client cannot—as a matter of law—suffer damages *unless and until* the client *actually recovers* money from a judgment or settlement that potentially is subject to the terminated lawyer's contingent fee. *See Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 562

(Tex. 2006) (discussing *Mandell & Wright v. Thomas*, 441 S.W.2d 841, 847 (Tex. 1969)). "In allowing the discharged lawyer to collect the contingent fee from any damages the client recovers, *Mandell* complies with the principle that a contingent-fee lawyer 'is entitled to receive the specified fee ***only when and to the extent the client receives payment***.'" *Hoover*, 206 S.W.3d at 562 (quoting Restatement (Third) of the Law Governing Lawyers §35(2)) (emphasis added). *See also Levine v. Bayne, Snell & Krause, Ltd.*, 40 S.W.3d 92, 94 (Tex. 2001); *Wilkinson v. Susman*, 2020 Tex. App. LEXS 8953 at *17-18, 2020 WL 6791057 (Tex. App.—Houston [14th] Nov. 19, 2020); *Grantham v. J&B Sausage Co.*, 2016 Tex. App. LEXIS 5168 at *13-14, 2016 WL 2935874 (Tex. App.—Houston [14th] May 17, 2016).

4. In its Original Petition, Plaintiff's allegations of damages are wholly conclusory, with no factual detail whatsoever. *See* Original Petition at ¶18 and ¶¶25-27. Plaintiff does not allege that the "Gonzales Clients" have received any money from a settlement or judgment that is subject to Plaintiff's contingent-fee agreement. Plaintiff's allegation of damages is nothing more than a speculative allegation of potential future damages. For this reason, Plaintiff has not pled facts that establish a dispute that is ripe for judicial resolution, and therefore Plaintiff's pleadings fail to establish the Court's subject matter jurisdiction. *See, e.g. Hill v. Heritage Resources*, 964 S.W.2d 89, 116 (Tex.App.—El Paso 1997) ("A cause of action for tortious interference with an existing contract does not accrue until the contract is interfered with ***and harm caused to the plaintiff***. . . . Until a cause of action accrues, a lawsuit is premature. . . . If the plaintiff is not yet harmed, even in the face of a breach of duty, then the cause of action has not yet accrued and any suit filed there upon is premature. . . . Moreover, if a claim is not yet ripe, a trial court has no jurisdiction to render an opinion thereon. . . . To the extent that a plaintiff seeks relief based upon facts that have not yet occurred, there is not live controversy between the

parties and a trial court lacks subject matter jurisdiction over such claims") (emphasis added). *See also Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000) ("[R]ipeness, like standing, is a threshold issue that implicates subject matter jurisdiction, and like standing, emphasizes the need for a concrete injury for a justiciable claim to be presented").

5. A plea to the jurisdiction is the appropriate procedural device for a defendant to challenge the court's subject matter jurisdiction. *See Texas Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 232 (Tex. 2004). When the Court lacks subject matter jurisdiction, it must sustain the plea to the jurisdiction and dismiss the case. *See City of Houston v. Rhule*, 477 S.W.3d 440, 442 (Tex. 2013).

SPECIAL EXCEPTIONS

1. Pursuant to Tex. R. Civ. P. 85 and Tex. R. Civ. P. 91, Defendant Puckett asserts the following Special Exceptions to Plaintiff's Original Complaint.

2. Plaintiff's Original Petition alleges one cause of action for tortious interference with contract. The legal elements of a claim for tortious interference with an existing contract are: (1) the existence of a valid contract subject to interference; (2) that the defendant willfully and intentionally interfered with the contract; (3) that the interference proximately caused the plaintiff's injury; and (4) that the plaintiff incurred actual damages or loss. *See Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 689 (Tex. 2017).

3. Plaintiff's Original Complaint in this case fails to allege facts in support of element 2—that the defendant willfully and intentionally interfered with the contract. Plaintiff's only allegations for this legal element of tortious interference are wholly conclusory. *See* Original Petition at ¶¶23-24. Plaintiff's allegations do nothing more than recite the words of the legal standard, without including any specific factual allegation whatsoever.

4. Plaintiff's Original Complaint in this case also fails to allege facts in support of element 3— that the interference proximately caused the plaintiff's injury. Again, Plaintiff's only allegations for this legal element of tortious interference are wholly conclusory. *See* Original Petition at ¶¶24-25. Plaintiff's allegations do nothing more than recite the words of the legal standard, without including any specific factual allegation whatsoever.

5. Plaintiff's Original Complaint in this case also fails to allege facts in support of element 4— that the plaintiff incurred actual damages or loss. Again, Plaintiff's only allegations for this legal element of tortious interference are wholly conclusory. *See* Original Petition at ¶18 and ¶¶25-27. Plaintiff's allegations do nothing more than recite the words of the legal standard, without including any specific factual allegation whatsoever.

6. When a plaintiff uses bare and conclusory allegations to plead a cause of action in "general terms," the Court should sustain special exceptions and require the plaintiff to make specific factual allegations supporting each legal element of the cause of action. *See, e.g. Subia v. Texas Dep't of Human Services*, 750 S.W.2d 827, 829 (Tex. App.—El Paso 1988). *See also Fain v. Great Spring Waters of Am.*, 973 S.W.2d 327, 329 (Tex. App.—Tyler 1998) ("[O]nly well pleaded facts may be taken as true, and conclusory pleadings do not support relief."); *Larue v. Genescreen, Inc.*, 957 S.W.2d 958, 961-62 (Tex. App.—Beaumont 1997) (affirming district court's grant of special exceptions where "no facts are plead which support this conclusory allegation").

GENERAL DENIAL

Pursuant to Tex. R. Civ. P. 92, Defendant Puckett generally denies each and every allegation contained within Plaintiff's Original Petition.

AFFIRMATIVE DEFENSES

Pursuant to Tex. R. Civ. P. 84 and 85, Defendant alleges the following affirmative defenses:

1. **First Affirmative Defense: Void Contract – Illegality**. Plaintiff may not recover for the alleged tortious interference with contract because the attorney contingent fee contract on which Plaintiff's alleged cause of action is based is a void contract because it is an illegal contract. Specifically, the attorney contingent fee contract is an illegal contract because it contains a contractual attorney lien provision that is illegal under Texas law and that is a violation of Texas Attorney Disciplinary Rules of Professional Conduct §1.08(h). *See* State Bar of Texas Professional Ethics Committee Opinion No. 610. Additionally, the attorney contingent fee contract is an illegal contract because Plaintiff has taken actual steps to enforce the illegal attorney lien provision by filing petitions in intervention against the Gonzales Clients in their pending federal civil litigation. Additionally, the attorney contingent fee contract is an illegal contract because enforcement of the contract's terms would result in an unconscionable fee for Plaintiff, in violation of Texas Attorney Disciplinary Rules of Professional Conduct §1.04(a).

2. Second Affirmative Defense: Void Contract – Against Public Policy. Plaintiff may not recover for the alleged tortious interference with contract because the attorney contingent fee contract on which Plaintiff's alleged cause of action is based is a void contract because it is a contract against public policy. Specifically, the attorney contingent fee contract is an illegal contract because it contains a contractual attorney lien provision that is illegal under Texas law and that is a violation of Texas Attorney Disciplinary Rules of Professional Conduct §1.08(h). *See* State Bar of Texas Professional Ethics Committee Opinion No. 610. Additionally,

the attorney contingent fee contract is a contract against public policy because Plaintiff has taken actual steps to enforce the illegal attorney lien provision by filing petitions in intervention against the Gonzales Clients in their pending federal civil litigation. Additionally, the attorney contingent fee contract is a contract against public policy because enforcement of the contract's terms would result in an unconscionable fee for Plaintiff, in violation of Texas Attorney Disciplinary Rules of Professional Conduct §1.04(a).

3. **Third Affirmative Defense: Plaintiff's Fault**. Plaintiff may not recover for the alleged tortious interference with contract because any injury or harm to Plaintiff is Plaintiff's own fault. Specifically, Plaintiff is at fault for any alleged injury or damages because: (1) Plaintiff committed acts of professional negligence and/or professional malpractice in connection with its representation of the Gonzales Clients, (2) Plaintiff was grossly inattentive to the handling of the Gonzales Clients' legal matters, (3) Plaintiff breached its fiduciary obligations to the Gonzales Clients, (4) Plaintiff engaged in acts of professional misconduct and violation of lawyer ethics in its handling of the Gonzales Clients' legal matters, (5) Plaintiff materially breached this attorney contingent fee contract by failing to fulfill its own obligations to the Gonzales Clients under the contract and (6) Plaintiff committed other acts and omissions that caused or contributed to any injury or damages alleged by Plaintiff.

4. **Fourth Affirmative Defense: Responsibility of Others.** Defendant Puckett alleges that each of the following individuals committed acts of professional negligence and/or other wrongful acts such that each person is responsible, in whole or in part, for any damages alleged by Plaintiff: (1) Scott Martin Hendler, (2) Maria Luisa Flores, (3) Stephen Demik, (4) Laura Goetsche, (5) Mack Martinez and (6) Alexis Lopez.

5. **Fifth Affirmative Defense: Privilege**. Defendant Puckett was legally privileged to engage in the conduct that Plaintiff alleges as interfering with Plaintiff's contract rights because Defendant Puckett was, at all relevant times, exercising his own legal rights in good faith to provide truthful information and honest advice to the Gonzales Clients within the scope of their affirmative request for legal advice.

6. **Sixth Affirmative Defense: Justification**. Defendant Puckett was legally justified to engage in the conduct that Plaintiff alleges as interfering with Plaintiff's contract rights because Defendant Puckett was, at all relevant times, exercising his own legal rights as an attorney to interact with and provide legal advice and services to the Gonzales Clients, who had affirmatively solicited Defendant Puckett's legal services.

7. **Seventh Affirmative Defense: One Satisfaction Rule**. Plaintiff is not allowed to recover in this lawsuit because of the one satisfaction rule. Plaintiff has already attempted to recover duplicative damages for a single alleged injury by simultaneously filing this lawsuit and also filing Pleas in Intervention in other pending civil litigation against the Gonzales Clients to also recovery attorney fees from the Gonzales Clients under the attorney contingent fee contract that is the basis for Plaintiff's alleged tortious interference claim.

REQUEST FOR A JURY TRIAL

Defendant Puckett requests a jury trial on all disputed factual issues in this case.

Dated: June 4, 2023

Respectfully submitted,

/s/ Gordie D. Puckett
Gordie Donald Puckett
Defendant *Pro Se*
Texas State Bar No. 24013358
Email: donald.puckett@outlook.com
Phone: 214-274-1044

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plea to the Jurisdiction, Special Exceptions, and Original Answer to Plaintiff's Original Petition was e-served on all counsel of record on June 4, 2023.

/s/ Gordie D. Puckett
Gordie Donald Puckett

6/5/2023 9:32 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-23-001636
Candy Schmidt

CAUSE NO. D-1-GN-23-001636

HENDLER FLORES LAW, PLLC,	§	
	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
GORDIE DONALD PUCKETT, DEVLIN LAW FIRM, LLC and **THE MARCONI LAW FIRM**,	§	**455th JUDICIAL DISTRICT**
	§	
	§	
Defendants.	§	

DEFENDANT DEVLIN LAW FIRM LLC'S ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

Pursuant to Tex. R. Civ. P. 83, 84 and 85, Defendant Devlin Law Firm LLC (herein "DLF" or "Defendant DLF") files this Answer to Plaintiff's Original Petition.

PLEA TO THE JURISDICTION

1. Defendant DLF asserts this Plea to the Jurisdiction pursuant to Tex. R. Civ. P. 85.

2. The Court lacks jurisdiction over this case due to a lack of ripeness. "Ripeness is a component of subject matter jurisdiction that focuses on a lawsuit's timing. . . [A] case must be ripe in order for the trial court to have subject matter jurisdiction . . . ." *Southwestern Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 682-83 (Tex. 2020).

3. This dispute is not ripe for judicial resolution because Plaintiff has not yet suffered any damages. Under Texas law, a lawyer with a contingent fee agreement that has been terminated by the client cannot—as a matter of law—suffer damages *unless and until* the client *actually recovers* money from a judgment or settlement that potentially is subject to the terminated lawyer's contingent fee. *See Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 562 (Tex. 2006) (discussing *Mandell & Wright v. Thomas*, 441 S.W.2d 841, 847 (Tex. 1969). "In

allowing the discharged lawyer to collect the contingent fee from any damages the client recovers, *Mandell* complies with the principle that a contingent-fee lawyer 'is entitled to receive the specified fee ***only when and to the extent the client receives payment***.'" *Hoover*, 206 S.W.3d at 562 (quoting Restatement (Third) of the Law Governing Lawyers §35(2)) (emphasis added). *See also Levine v. Bayne, Snell & Krause, Ltd.*, 40 S.W.3d 92, 94 (Tex. 2001); *Wilkinson v. Susman*, 2020 Tex. App. LEXIS 8953 at *17-18, 2020 WL 6791057 (Tex. App.—Houston [14th] Nov. 19, 2020); *Grantham v. J&B Sausage Co.*, 2016 Tex. App. LEXIS 5168 at *13-14, 2016 WL 2935874 (Tex. App.—Houston [14th] May 17, 2016).

4. Courts in Texas and elsewhere have repeatedly held that causes of action arising out of alleged rights to a contingency fee are not ripe where no recovery on the underlying suit has been made and there is no clear indication that one is likely to be awarded. *See, e.g.*, *In re Boyd Veigel, P.C.*, 575 F. App'x 393, 397 (5th Cir. 2014) (affirming grant of motion to dismiss claim for declaratory judgment of entitlement to attorneys' fees). Similarly, it has been well-settled law for over 125 years in Texas that a cause of action for compensation under a contingent fee does not accrue until there has been recovery on the underlying claim. *See Cobb v. First Nat'l Bank*, 91 Tex. 226, 230-31, 42 S.W. 770, 771-72 (1897); *see also*, *Wood v. Tran*, 2019 Tex. App. LEXIS 6756, at *8-9 (Tex. App.—Houston [1st] Aug. 6, 2019) (holding that cause of action for breach of contingency fee contract accrued "upon recovery"); *Douglas-Peters v. Cho, Choe & Holen, P.C.*, No. 05-15-01538-CV, 2017 Tex. App. LEXIS 1836, at *39-40 (Tex. App.—Dallas [5th] Mar. 3, 2017) (holding that cause of action for breach of contingency fee agreement accrued when recovery was had and payment of agreed fee was refused, not when client terminated the contract);

5. In its Original Petition, Plaintiff's allegations of damages are wholly conclusory, with no factual detail whatsoever. *See* Original Petition at ¶18 and ¶¶25-27. Plaintiff does not allege that the "Gonzales Clients" have received any money from a settlement or judgment that is subject to Plaintiff's contingent-fee agreement. Plaintiff's allegation of damages is nothing more than a speculative allegation of potential future damages. For this reason, Plaintiff has not pled facts that establish a dispute that is ripe for judicial resolution, and therefore Plaintiff's pleadings fail to establish the Court's subject matter jurisdiction. *See, e.g. Hill v. Heritage Resources*, 964 S.W.2d 89, 116 (Tex.App.—El Paso 1997) ("A cause of action for tortious interference with an existing contract does not accrue until the contract is interfered with ***and harm caused to the plaintiff***. . . . Until a cause of action accrues, a lawsuit is premature. . . . If the plaintiff is not yet harmed, even in the face of a breach of duty, then the cause of action has not yet accrued and any suit filed there upon is premature. . . . Moreover, if a claim is not yet ripe, a trial court has no jurisdiction to render an opinion thereon. . . . To the extent that a plaintiff seeks relief based upon facts that have not yet occurred, there is not live controversy between the parties and a trial court lacks subject matter jurisdiction over such claims") (emphasis added). *See also Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000) ("[R]ipeness, like standing, is a threshold issue that implicates subject matter jurisdiction, and like standing, emphasizes the need for a concrete injury for a justiciable claim to be presented").

6. A plea to the jurisdiction is the appropriate procedural device for a defendant to challenge the court's subject matter jurisdiction. *See Texas Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 232 (Tex. 2004). When the Court lacks subject matter jurisdiction, it must sustain the plea to the jurisdiction and dismiss the case. *See City of Houston v. Rhule*, 477 S.W.3d 440, 442 (Tex. 2013).

SPECIAL EXCEPTIONS

1. Pursuant to Tex. R. Civ. P. 85 and Tex. R. Civ. P. 91, Defendant DLF asserts the following Special Exceptions to Plaintiff's Original Complaint.

2. Plaintiff's Original Petition alleges only one cause of action for tortious interference with contract. The legal elements of a claim for tortious interference with an existing contract are: (1) the existence of a valid contract subject to interference; (2) that the defendant willfully and intentionally interfered with the contract; (3) that the interference proximately caused the plaintiff's injury; and (4) that the plaintiff incurred actual damages or loss. *See Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 689 (Tex. 2017).

3. Here, Plaintiff's Original Complaint fails to allege facts in support of element 2— that the defendant willfully and intentionally interfered with the contract. Plaintiff's only allegations for this legal element of tortious interference are wholly conclusory. *See* Original Petition at ¶¶23-24. Plaintiff's allegations do nothing more than recite the words of the legal standard, without including any specific factual allegation whatsoever.

4. Here, Plaintiff's Original Complaint also fails to allege facts in support of element 3— that the interference proximately caused the plaintiff's injury. Again, Plaintiff's only allegations for this legal element of tortious interference are wholly conclusory. *See* Original Petition at ¶¶24-25. Plaintiff's allegations do nothing more than recite the words of the legal standard, without including any specific factual allegation whatsoever.

5. Here, Plaintiff's Original Complaint also fails to allege facts in support of element 4— that the plaintiff incurred actual damages or loss. Again, Plaintiff's only allegations for this legal element of tortious interference are wholly conclusory. *See* Original Petition at ¶18 and

¶¶25-27. Plaintiff's allegations do nothing more than recite the words of the legal standard, without including any specific factual allegation whatsoever.

6. When a plaintiff uses bare and conclusory allegations to plead a cause of action in "general terms," the Court should sustain special exceptions and require the plaintiff to make specific factual allegations supporting each legal element of the cause of action. *See, e.g. Subia v. Texas Dep't of Human Services*, 750 S.W.2d 827, 829 (Tex. App.—El Paso 1988). *See also Fain v. Great Spring Waters of Am.*, 973 S.W.2d 327, 329 (Tex. App.—Tyler 1998) ("[O]nly well pleaded facts may be taken as true, and conclusory pleadings do not support relief."); *Larue v. Genescreen, Inc.*, 957 S.W.2d 958, 961-62 (Tex. App.—Beaumont 1997) (affirming district court's grant of special exceptions where "no facts are plead which support this conclusory allegation").

7. The header of Plaintiff's Original Complaint identifies Defendant DLF as "DEVLINE LAW FIRM, LLC." The body of Plaintiff's Original Complaint variously identifies Defendant DLF as "Devlin Law Firm, LLC" (at 1, ¶ 6) and "Devlin Law Firm LLC[.]" Defendant DLF is in fact "Devlin Law Firm LLC"—a fact readily ascertainable from its registration information available from the State of Delaware, Department of State: Division of Corporations.

GENERAL DENIAL

Pursuant to Tex. R. Civ. P. 92, Defendant DLF generally denies each and every allegation contained within Plaintiff's Original Petition.

AFFIRMATIVE DEFENSES

Pursuant to Tex. R. Civ. P. 84 and 85, Defendant alleges the following affirmative defenses:

1. **First Affirmative Defense: Void Contract – Illegality**. Plaintiff may not recover for the alleged tortious interference with contract because the attorney contingent fee contract on which Plaintiff's alleged cause of action is based is a void contract because it is an illegal contract. Specifically, the attorney contingent fee contract is an illegal contract because it contains a contractual attorney lien provision that is illegal under Texas law and that is a violation of Texas Attorney Disciplinary Rules of Professional Conduct §1.08(h). *See* State Bar of Texas Professional Ethics Committee Opinion No. 610. Additionally, the attorney contingent fee contract is an illegal contract because Plaintiff has taken actual steps to enforce the illegal attorney lien provision by filing petitions in intervention against the Gonzales Clients in their pending federal civil litigation. Additionally, the attorney contingent fee contract is an illegal contract because enforcement of the contract's terms would result in an unconscionable fee for Plaintiff, in violation of Texas Attorney Disciplinary Rules of Professional Conduct §1.04(a).

2. **Second Affirmative Defense: Void Contract – Against Public Policy**. Plaintiff may not recover for the alleged tortious interference with contract because the attorney contingent fee contract on which Plaintiff's alleged cause of action is based is a void contract because it is a contract against public policy. Specifically, the attorney contingent fee contract is an illegal contract because it contains a contractual attorney lien provision that is illegal under Texas law and that is a violation of Texas Attorney Disciplinary Rules of Professional Conduct §1.08(h). *See* State Bar of Texas Professional Ethics Committee Opinion No. 610. Additionally, the attorney contingent fee contract is a contract against public policy because Plaintiff has taken actual steps to enforce the illegal attorney lien provision by filing petitions in intervention against the Gonzales Clients in their pending federal civil litigation. Additionally, the attorney contingent fee contract is a contract against public policy because enforcement of the contract's terms would

result in an unconscionable fee for Plaintiff, in violation of Texas Attorney Disciplinary Rules of Professional Conduct §1.04(a).

3. **Third Affirmative Defense: Plaintiff's Fault**. Plaintiff may not recover for the alleged tortious interference with contract because any injury or harm to Plaintiff is Plaintiff's own fault. Specifically, Plaintiff is at fault for any alleged injury or damages because: (1) Plaintiff committed acts of professional negligence and/or professional malpractice in connection with its representation of the Gonzales Clients, (2) Plaintiff was grossly inattentive to the handling of the Gonzales Clients' legal matters, (3) Plaintiff breached its fiduciary obligations to the Gonzales Clients, (4) Plaintiff engaged in acts of professional misconduct and violation of lawyer ethics in its handling of the Gonzales Clients' legal matters, (5) Plaintiff materially breached this attorney contingent fee contract by failing to fulfill its own obligations to the Gonzales Clients under the contract and (6) Plaintiff committed other acts and omissions that caused or contributed to any injury or damages alleged by Plaintiff.

4. **Fourth Affirmative Defense: Responsibility of Others.** Defendant DLF alleges that each of the following individuals committed acts of professional negligence and/or other wrongful acts such that each person is responsible, in whole or in part, for any damages alleged by Plaintiff: (1) Scott Martin Hendler, (2) Maria Luisa Flores, (3) Stephen Demik, (4) Laura Goetsche, and (5) Mack Martinez.

5. **Fifth Affirmative Defense: Privilege**. Defendant DLF was legally privileged to engage in the conduct that Plaintiff alleges as interfering with Plaintiff's contract rights because Defendant DLF was, at all relevant times, performing its obligations (and/or acting through persons (1) performing their own obligations and/or (2) acting in accord with their own rights) in

good faith to provide truthful information and honest advice to the Gonzales Clients within the scope of their affirmative request for legal advice.

6. **Sixth Affirmative Defense: Justification**. Defendant DLF was legally justified in engaging in the conduct that Plaintiff alleges as interfering with Plaintiff's contract rights because Defendant DLF was, at all relevant times, performing its obligations (and/or acting through persons (1) performing their own obligations and/or (2) acting in accord with their own rights) to interact with and provide legal advice and services to the Gonzales Clients, who had affirmatively solicited Defendant DLF's legal services. Further, Defendant DLF was legally justified in any conduct that Plaintiff alleges as interfering with Plaintiff's contract rights because Plaintiff's retention of the Gonzalez Clients' legal matters, under the circumstances, threatened or constituted a breach of one or more Texas Disciplinary Rules of Professional Conduct or other ethical obligations owed by Plaintiff.

7. **Seventh Affirmative Defense: One Satisfaction Rule**. Plaintiff is not allowed to recover in this lawsuit because of the one satisfaction rule. Plaintiff has already attempted to recover duplicative damages for a single alleged injury by simultaneously filing this lawsuit and also filing a Plea in Intervention against the Gonzales Clients to also recovery attorney fees from the Gonzales Clients under the attorney contingent fee contract that is the basis for Plaintiff's alleged tortious interference claim.

REQUEST FOR A JURY TRIAL

Defendant DLF requests a jury trial on all disputed factual issues in this case.

Dated: June 4, 2023

Respectfully submitted,

/s/ Chad Henson

Clifford Chad Henson
Bar No. 24087711
DEVLIN LAW FIRM LLC
1411 North Trail Drive
Carrollton, TX 75006
(t) (214) 728-5365
(f) (302) 353-4201

Counsel for Defendant Devlin Law Firm LLC

6/5/2023 12:00 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-23-001636
Candy Schmidt

CAUSE NO. D-1-GN-23-001636

HENDLER FLORES LAW, PLLC,	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	**TRAVIS COUNTY, TEXAS**
v.	§	
GORDIE DONALD PUCKETT, DEVLINE LAW FIRM, LLC and **THE MARCONI LAW FIRM**,	§	**455th JUDICIAL DISTRICT**
Defendants.	§	

ORIGINAL ANSWER AND PLEA TO THE JURISDICTION OF THE MARCONI FIRM

TO THE HONORABLE COURT:

COMES NOW The Marconi Firm and files this its Original Answer and Plea to the Jurisdiction and shows the Court the following:

PLEA TO THE JURISDICTION

1. The Marconi Firm asserts this Plea to the Jurisdiction pursuant to Rule 85 of the Texas Rules of Civil Procedure.

2. The Court lacks jurisdiction over this case due to a lack of ripeness. "Ripeness is a component of subject matter jurisdiction that focuses on a lawsuit's timing. . . [A] case must be ripe in order for the trial court to have subject matter jurisdiction . . . ." *Southwestern Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 682-83 (Tex. 2020).

3. This dispute is not ripe for judicial resolution because Plaintiff has not yet suffered any damages. Under Texas law, a lawyer with a contingent fee agreement that has been terminated by the client cannot—as a matter of law—suffer damages *unless and until* the client *actually recovers* money from a judgment or settlement that potentially is subject to the terminated lawyer's contingent fee. *See Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 562 (Tex. 2006) (discussing

Mandell & Wright v. Thomas, 441 S.W.2d 841, 847 (Tex. 1969). "In allowing the discharged lawyer to collect the contingent fee from any damages the client recovers, *Mandell* complies with the principle that a contingent-fee lawyer 'is entitled to receive the specified fee ***only when and to the extent the client receives payment***.'" *Hoover*, 206 S.W.3d at 562 (quoting Restatement (Third) of the Law Governing Lawyers §35(2)) (emphasis added). *See also Levine v. Bayne, Snell & Krause, Ltd.*, 40 S.W.3d 92, 94 (Tex. 2001); *Wilkinson v. Susman*, 2020 Tex. App. LEXS 8953 at *17-18, 2020 WL 6791057 (Tex. App.—Houston [14th] Nov. 19, 2020); *Grantham v. J&B Sausage Co.*, 2016 Tex. App. LEXIS 5168 at *13-14, 2016 WL 2935874 (Tex. App.—Houston [14th] May 17, 2016).

4. In its Original Petition, Plaintiff's allegations of damages are wholly conclusory, with no factual detail whatsoever. *See* Original Petition at ¶18 and ¶¶25-27. Plaintiff does not allege that the "Gonzales Clients" have received any money from a settlement or judgment that is subject to Plaintiff's contingent-fee agreement. Plaintiff's allegation of damages is nothing more than a speculative allegation of potential future damages. For this reason, Plaintiff has not pled facts that establish a dispute that is ripe for judicial resolution, and therefore Plaintiff's pleadings fail to establish the Court's subject matter jurisdiction. *See, e.g. Hill v. Heritage Resources*, 964 S.W.2d 89, 116 (Tex.App.—El Paso 1997) ("A cause of action for tortious interference with an existing contract does not accrue until the contract is interfered with *and harm caused to the plaintiff*. . . . Until a cause of action accrues, a lawsuit is premature. . . . If the plaintiff is not yet harmed, even in the face of a breach of duty, then the cause of action has not yet accrued and any suit filed there upon is premature. . . . Moreover, if a claim is not yet ripe, a trial court has no jurisdiction to render an opinion thereon. . . . To the extent that a plaintiff seeks relief based upon facts that have not yet occurred, there is not live controversy between the parties and a trial court

lacks subject matter jurisdiction over such claims") (emphasis added). *See also Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000) ("[R]ipeness, like standing, is a threshold issue that implicates subject matter jurisdiction, and like standing, emphasizes the need for a concrete injury for a justiciable claim to be presented").

5. A plea to the jurisdiction is the appropriate procedural device for a defendant to challenge the court's subject matter jurisdiction. *See Texas Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 232 (Tex. 2004). When the Court lacks subject matter jurisdiction, it must sustain the plea to the jurisdiction and dismiss the case. *See City of Houston v. Rhule*, 477 S.W.3d 440, 442 (Tex. 2013).

GENERAL DENIAL

6. The Marconi Firm generally denies the allegations contained within Plaintiff's Original Petition.

AFFIRMATIVE DEFENSES

7. The Marconi Firm asserts the affirmative defenses of privilege and justification.

Dated: June 4, 2023

Respectfully submitted,

THE MARCONI FIRM

By: */s/Michael Marconi*

Michael Marconi
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9288 Huntington Square
North Richland Hills, Texas 76182
Telephone: (214) 682-3592
Facsimile: (817) 479-2210

CERTIFICATE OF SERVICE

I hereby certify that the Original Answer and Plea to the Jurisdiction of The Marconi Firm was e-served on all counsel of record on this 4th day of June 2023.

/s/ Michael Marconi
Michael Marconi

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HENDLER FLORES LAW PLLC,	§	
Plaintiff	§	
	§	
vs.	§	**Civil Action No.** 1:23-cv-629
	§	
DEVLIN LAW FIRM LLC	§	
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Hendler Flores Law, PLLC ("Plaintiff" or "HFL") files this suit for tortious interference with contract against Defendant Devlin Law Firm LLC ("Defendant" or "Devlin Law"). In support thereof, Plaintiff states as follows:

I. INTRODUCTION

1. This lawsuit arises out of the Devlin Law Firm's willful and intentional interference with HFL's contractual relationships with its clients.

2. After hiring one of HFL's former employees, Defendant began making false accusations about HFL to two of HFL's clients to persuade them to terminate their retainer agreement with HFL. Defendant's false accusations included statements about HFL, its attorneys, and the quality of their work.

3. As a result of Defendant's tortious interference, HFL's clients terminated a years-long relationship with HFL—a respected personal injury firm in Austin, Texas—and instead hired Defendant—an intellectual property firm based in Delaware—to litigate their policy brutality claims against City of Austin police officers.

4. HFL seeks to recover from Defendant the damages it has suffered as a result of Defendant's willful and intentional interference.

II. PARTIES

5. Plaintiff Hendler Flores Law, PLLC is a Texas Limited Liability Company whose principal place of business is in Travis County, Texas. Plaintiff's members are all citizens of the State of Texas.

6. Defendant Devlin Law Firm, LLC is a Delaware Limited Liability Company with its principal place of business in Wilmington, Delaware. On information and belief, Defendant's members are not citizens of the State of Texas. Defendant may be served with process at its headquarters located at 1526 Gilpin Avenue, Wilmington, Delaware, 19806.

III. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332 because this case involves claims between citizens of two different states and there is complete diversity of citizenship.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this lawsuit occurred in this district. This lawsuit arises out of Defendant's intentional and willful interference with Plaintiff's contractual relationship with its clients. Plaintiff performed its contractual obligations under the contract at issue in Travis County, Texas. The clients Defendant stole from Plaintiff reside in this district, and the underlying lawsuit Plaintiff filed on behalf of those clients was filed and remains pending in this district.

IV. FACTUAL ALLEGATIONS

9. HFL, founded in 1993, is a well-respected personal injury litigation firm located in Austin, Texas. While HFL has a wide-ranging personal injury practice, as relevant to this case, HFL has a docket of police brutality cases, in which HFL represents victims of police violence and their families.

10. On January 7, 2020, Alex Gonzales, Sr. and Elizabeth Herrera (the "Gonzalez Plaintiffs") signed a written Attorney Retainer Agreement ("Retainer Agreement") employing HFL to represent them as counsel of record in police brutality litigation against the Austin Police Department ("APD"), certain APD officers, and the City of Austin related to the death of their son (the "Gonzalez litigation").

11. Pursuant to the Retainer Agreement, the Gonzalez Plaintiffs agreed to pay HFL a contingent attorneys' fee of 40% of any settlement, verdict, or recovery obtained in the Gonzalez litigation. The Retainer Agreement further clarifies that if the Gonzalez Plaintiffs were to terminate HFL without cause and later obtain a recovery, the full percentage of the contingent fee will remain due, along with expenses incurred prior to the date of termination.

12. HFL hired Donald Puckett as an associate attorney in March 2022—more than two years after HFL began representing the Gonzalez Plaintiffs. While Mr. Puckett was employed by HFL, Mr. Puckett was assigned to work on the Gonzalez litigation.

13. On December 28, 2022, only nine months after starting to work at HFL, Mr. Puckett abruptly resigned from his employment with HFL.

14. Shortly thereafter, Mr. Puckett was hired by Defendant. Defendant advertises itself as a law firm specializing in intellectual property.[1] In its list of practice areas, Defendant does not list either personal injury or police brutality cases.[2]

15. On January 3, 2023, HFL filed a lawsuit on behalf of the Gonzalez Plaintiffs, both in their individual capacity, and as representatives of the estate of their son, Alex Gonzalez, Jr., against two APD officers and the City of Austin in the United States District for the Western District of Texas, Austin Division. That lawsuit remains pending in this Court. *See Gonzalez, et al. v. Serrato, et al.*, Case No. 1:23-cv-00009 (W.D. Tex.) (the "Gonzalez lawsuit").

16. After Mr. Puckett was hired by Defendant, Defendant began attempting to interfere with HFL's contractual relationship with the Gonzalez Plaintiffs. Defendant had actual knowledge of the Retainer Agreement between HFL and the Gonzalez Plaintiffs and persuaded the Gonzalez Plaintiffs to terminate that relationship. Defendant did so, at least in part, by making false accusations to the Gonzalez Plaintiffs about HFL, its attorneys, and the quality of their work.

17. Defendant's interference was successful: on or about March 24-25, 2023, Defendant successfully persuaded the Gonzalez Plaintiffs to terminate their relationship with HFL and to instead retain Defendant to represent them in the Gonzalez litigation.

18. On March 24, 2023, Defendant filed a notice of appearance in the Gonzalez lawsuit through its employees Donald Puckett and Clifford Chad Henson. *See* Dkts. 10-11, *Gonzalez, et al. v. Serrato, et al.*, Case No. 1:23-cv-00009 (W.D. Tex.). On or around that same day, HFL received correspondence purportedly sent on behalf of the Gonzalez Plaintiffs demanding that

---

[1] *See* https://devlinlawfirm.com/about-devlin-law-firm/ (last accessed June 1, 2023).
[2] *See* https://devlinlawfirm.com/practice-areas/ (listing a number of commercial practice areas, most involving patent, intellectual property, and trademark law) (last accessed June 1, 2023).

HFL file a notice of withdrawal of representation in the Gonzalez lawsuit and transfer the Gonzalez Plaintiffs' files over to Defendant.

19. But for Defendant's willful and intentional interference with HFL's Retainer Agreement with the Gonzalez Plaintiffs, the Gonzalez Plaintiffs would not have terminated their years-long relationship with HFL.

20. HFL has been damaged by Defendant's tortious interference with its contractual relationships.

V. COUNT I
TORTIOUS INTERFERENCE WITH CONTRACT

21. The previous factual statements and allegations are incorporated by reference.

22. Under Texas law, the elements of a claim for tortious interference with existing contract are: "(1) a contract subject to interference; (2) a willful and intentional act of interference (3) that was a proximate cause of the plaintiff's damages; and (4) actual damage." *Wolf v. Cowgirl Tuff Co.*, No. 1-15-CV-1195-RP, 2016 WL 5957663, at *3 (W.D. Tex. Apr. 19, 2016).

23. HFL had an existing, fully executed attorney contingent fee contract—the Retainer Agreement—that long predated Defendant's relationship with the Gonzalez Plaintiffs. Defendant was a stranger to this contract.

24. After hiring one of HFL's former employees, Defendant willfully and intentionally interfered with HFL's contract by persuading the Gonzalez Plaintiffs to terminate their Retainer Agreement with HFL. Defendant did so, at least in part, by making false accusations to the Gonzalez Plaintiffs about HFL, its attorneys, and the quality of their work.

25. Defendant's willful and intentional acts of interference were the proximate cause of the Gonzalez Plaintiff's decision to terminate their Retainer Agreement with HFL. But for Defendant's interference, the Gonzalez Plaintiffs would not have terminated their Retainer

Agreement with HFL. Accordingly, Defendant's willful and intentional acts were the proximate cause of HFL's damages.

26. As a result of Defendant's willful and intentional acts, HFL has suffered, and continues to suffer, actual damages and loss, including but not limited to loss of the benefits owed to HFL under the Retainer Agreement, injury to reputation, and/or lost profits.

VI. DEMAND FOR JURY TRIAL

27. HFL respectfully demands a jury trial on all of its claims and causes of action so triable.

VII. PRAYER

WHEFORE, HFL asks this Court to enter judgment against Defendant as follows:

a. Awarding HFL the economic damages HFL has suffered as a result of Defendant's tortious interference, including loss of benefits under the Retainer Agreement and/or lost profits;

b. Awarding HFL the personal damages HFL has suffered as a result of Defendant's tortious interference, including damage to HFL's reputation;

c. Awarding HFL exemplary damages;

d. Awarding HFL its reasonable expenses and attorneys' fees incurred in presenting this action;

e. Awarding HFL pre- and post-judgment interest at the highest rate permitted by law; and

f. Any and all other relief to which HFL may be justly entitled.

Dated: June 2, 2023

Respectfully Submitted,

/s/ Jessica E. Underwood

NIX PATTERSON, LLP

Bradley E. Beckworth
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Trey Duck
TX Bar No. 24077234
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Counsel for Plaintiff

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

HENDLER FLORES LAW PLLC

(b) County of Residence of First Listed Plaintiff Travis Cty, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Jessica E. Underwood
NIX PATTERSON, LLP
8701 Bee Caves Road, Suite 500

DEFENDANTS

DEVLIN LAW FIRM LLC

County of Residence of First Listed Defendant New Castle Cty, DE
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*
Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding | ☐ 2 Removed from State Court | ☐ 3 Remanded from Appellate Court | ☐ 4 Reinstated or Reopened | ☐ 5 Transferred from Another District *(specify)* | ☐ 6 Multidistrict Litigation - Transfer | ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332

Brief description of cause:
Tortious interference with contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE Judge Pitman DOCKET NUMBER 1:23-cv-00009-RP

DATE
Jun 2, 2023

SIGNATURE OF ATTORNEY OF RECORD
Jessicas Underwood
Digitally signed by Jessicas Underwood
Date: 2023.06.02 08:57:11 -05'00'

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Monday, June 5, 2023 at 10:27:37 Central Daylight Time

Subject: Activity in Case 1:23-cv-00629 HENDLER FLORES LAW PLLC Complaint
Date: Friday, June 2, 2023 at 10:01:55 AM Central Daylight Time
From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered by Underwood, Jessica on 6/2/2023 at 10:01 AM CDT and filed on 6/2/2023
Case Name: HENDLER FLORES LAW PLLC
Case Number: 1:23-cv-00629
Filer: HENDLER FLORES LAW PLLC
Document Number: 1

Docket Text:
COMPLAINT *Plaintiff's Original* (Filing fee $ 402 receipt number ATXWDC-17509427), filed by HENDLER FLORES LAW PLLC. (Attachments: # (1) Civil Cover Sheet)(Underwood, Jessica)

1:23-cv-00629 Notice has been electronically mailed to:

Jessica Elaine Underwood junderwood@nixlaw.com, bkellogg@nixlaw.com, ncameron@nixlaw.com

1:23-cv-00629 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=6/2/2023] [FileNumber=28638408-0
] [9023f967742c1debb77230c8a07d32923082f1e806b685d5146f5add8ff2f15d1db
992d398598acf065e9fe4053d0f459038422587afe5536f3ee2ca267f7186]]
Document description: Civil Cover Sheet
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=6/2/2023] [FileNumber=28638408-1
] [08eb5860fb49478b324eb4054234469f424a2fafc465ea56754f4001efcd3e6ee18
0943d427302e961035194669b78eaecb6fc47172acbb3925c0b97f565bb10]]

EXHIBIT F

DEVLIN
LAW FIRM LLC
INTELLECTUAL PROPERTY LAW

1526 Gilpin Avenue
Wilmington, Delaware 19806
United States of America
Tel: 302-449-9010
Fax: 302-353-4251
www.devlinlawfirm.com

MAY 23, 2023

VIA EMAIL
Scott M. Hendler
901 S. MoPac Expressway
Bldg. 1, Suite #300
Austin, Texas 78746
shendler@hendlerlaw.com

Re: Rule 11 Notice – Motion for Leave to Intervene in Case No. 1:22-cv-655 and Case No. 1:23-cv-9, in the U.S. Dist. Court for the W.D. Tex. (Austin Division).

Dear Mr. Hendler:

I am writing this letter to put you on notice pursuant to Fed. R. Civ. P. 11(c)(2) that my clients, Alex Gonzales, Sr. and Elizabeth Herrera, intend to file a Rule 11 motion for sanctions against you and Hendler Flores Law for the filing of your Motion for Leave to Intervene in each of the above-styled cases if the motion is not withdrawn in the next 21 days.

In your Motion for Leave to Intervene and in your supporting affidavit, you state that HFL's Retainer Agreement with the Gonzales family included a contractual attorney lien provision that HFL is seeking to enforce through its Motion for Leave to Intervene. It appears that you have not consulted the relevant ethical rules regarding contractual attorney liens in Texas.

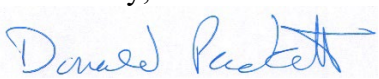
I attach to this letter a copy of Opinion No. 610 from the Professional Ethics Committee for the State Bar of Texas, issued in August of 2011. This Texas State Bar ethics opinion squarely holds that it is unethical and a violation of Texas Disciplinary Rule 1.08(h) for a lawyer to secure a contractual lien or other security interest in the subject matter of a client's litigation.

None of the cases cited in HFL's Motion for Leave to Intervene are contrary to Ethics Opinion 610. All cases cited in your motion: (1) were decided prior to 2011, and/or (2) involved enforcement of an attorney's contingent fee rights in ways that were not a contractual lien. Each of the cases cited in the Motion for Leave to Intervene also is distinguishable in other ways.

In short, HFL's Retainer Agreement is void and unenforceable because it contains a contractual attorney lien provision that is illegal under Texas law and that violates the attorney rules of ethics. HFL's attempt to enforce this illegal attorney lien by filing a Motion for Leave to Intervene also violates Disciplinary Rule 1.08(h). HFL's Motion for Leave to Intervene therefore is not in compliance with, *inter alia*, Fed. R. Civ. P. 11(b)(2).

I urge you to withdraw your Motion for Leave to Intervene immediately. The Gonzales family intends to file a motion for Rule 11 sanctions if HFL's motion for leave is not withdrawn.

Sincerely,



Donald Puckett

Enclosure: State Bar of Texas, Professional Ethics Committee Opinion No. 610

Cc: Stephen Demik (*via email to: sdemik@hendlerlaw.com*)

THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 610

August 2011

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, is a lawyer permitted to acquire, by agreement with his client, a security interest in the subject matter of litigation that the lawyer is conducting for the client in order to secure payment of the lawyer's fee with respect to the litigation?

STATEMENT OF FACTS

A lawyer and the lawyer's client enter into a contingent fee agreement with respect to a litigation matter being handled by the lawyer which provides for the client to grant to the lawyer, as a means of securing payment of the fee due to the lawyer in the matter, a security interest in the cause of action that is the subject of the litigation. The cause of action relates to a claim for damages arising from an injury sustained by the client.

DISCUSSION

The facts considered in this case relate to a lawyer's acquisition of one type of proprietary interest – a security interest – in a matter that the lawyer is handling for his client. Rule 1.08(h) of the Texas Disciplinary Rules of Professional Conduct prohibits a lawyer from acquiring a proprietary interest in a cause of action or subject matter of litigation that the lawyer is handling for a client, with two limited exceptions:

> "A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
>
> (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
>
> (2) contract in a civil case with a client for a contingent fee that is permissible under Rule 1.04."

Thus under Rule 1.08(h), a lawyer may not acquire a security interest or other proprietary interest in a matter being handled by the lawyer unless the particular proprietary interest is either a contingent fee permitted under Rule 1.04 or "a lien granted by law to secure the lawyer's fee or expenses."

Comment 7 to Rule 1.08 explains the underlying philosophy of Rule 1.08 as follows:

> "This Rule embodies the traditional general precept that lawyers are prohibited from acquiring a proprietary interest in the subject matter of litigation. This general precept, which has its basis in common law champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these Rules, such as the exception for contingent fees set forth in Rule 1.04 and the exception for certain advances of the costs of litigation set forth in paragraph (d) [of Rule 1.08]."

Although the fee agreement between the lawyer and the client provides for a contingent fee for the services to be provided in the litigation matter, the contingent fee and the security interest are two different types of proprietary interest in the client's litigation matter. A security interest in a litigation matter is not an essential part of a contingent fee agreement that is permitted under Rule 1.04, and the fact that a contingent fee is permissible does not make a security interest to secure such a fee also permissible. The security interest must itself satisfy the requirements of Rule 1.08(h).

Since a security interest to secure a contingent fee is not itself a contingent fee, the security interest here considered will be permissible under Rule 1.08(h) only if the security interest qualifies as "a lien granted by law to secure the lawyer's fee or expenses." Under Texas law, there is no general statutory attorney's lien but a lawyer has a right to claim a common law possessory lien against a client's property, money and papers for the payment of amounts due the lawyer for services and expenses. See Professional Ethics Committee Opinion 395 (May 1979, corrected June 1980) and Opinion 411 (January 1984). A leading Texas case on the attorney's lien under Texas common law is the decision of the Supreme Court of Texas in *Thomson* v. *Findlater Hardware Co.,* 205 S.W. 831, 109 Tex. 235 (Tex. 1918), which recognized (quoting Mechem on Agency) that "[a]n attorney has a general lien upon all the papers, deeds, vouchers, and other documents of his client, which come into the possession of the attorney while he is acting for his client in a professional capacity." 205 S.W. at 832, 109 Tex. at 237. It should be noted that this lien on a client's documents is subject to the important limitation set forth in Rule 1.15(d) of the Texas Disciplinary Rules of Professional Conduct that a lawyer "may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation."

In the circumstances considered in this opinion, the proposed security interest is not an attorney's lien granted under Texas law within the meaning of Rule 1.08(h)(1). Instead the proposed security interest is to be created by contractual agreement between the lawyer and his client. The proposed security interest is thus a proprietary interest in a litigation matter being handled by the lawyer who is seeking to acquire the security interest, but this security interest is not within the scope of the exceptions stated in Rule 1.08(h). Accordingly, under Rule 1.08(h), acquisition by the lawyer of the proposed security interest is prohibited.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer representing a client in litigation may not acquire, by agreement with his client, a lien upon the subject matter of the litigation as a means of securing payment of the lawyer's fee with respect to the litigation.

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Alex Gonzales, Sr., and	§	
Elizabeth Herrera	§	
Plaintiff,	§	
v.	§	**Case no. 1:22-cv-655-RP**
	§	
City of Austin	§	
Defendants.	§	
	§	

PLAINTIFF'S RESPONSES TO DEFENDANT CITY OF AUSTIN'S FIRST REQUEST FOR PRODUCTION (1-45)

COMES NOW, Plaintiffs, pursuant to FRCP 34(b)(2), and hereby submits these Responses to Defendant City of Austin's First Request for Production (1-45).

GENERAL OBJECTIONS

Plaintiff objects to the Definitions and Instructions provided by Defendant City of Austin's First Request for Production to Plaintiffs (1-45) to the extent the instructions and/or definitions attempt to expand Plaintiff's discovery obligations beyond what is set forth in the Federal Rules of Civil Procedure, local rules of the Western District of Texas, and the orders of this Court.

[redacted]

REQUEST FOR PRODUCTION NO. 17
The attorneys' fee agreement between you and your legal counsel relating to this Litigation.

Response:
Plaintiffs object to this request on the basis of attorney-client privilege and attorney work-product privilege. Plaintiffs further object that this request is overbroad, seeks information irrelevant to this lawsuit, and therefore exceeds the proper scope of discovery under the Federal Rules of Civil Procedure.

[redacted]

[redacted]

Dated: November 22, 2022

Respectfully submitted,

HENDLER FLORES LAW, PLLC

/s/ Donald Puckett
Scott M. Hendler - Texas Bar No. 0944550
shendler@hendlerlaw.com
Donald Puckett - Texas Bar No. 24013358
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901 S. MoPac Expressway
Bldg. 1, Suite #300
Austin, Texas 78746
Telephone: (512) 439-3200
Facsimile: (512) 439-3201

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served to all know counsel of record via electronic mail on November 22, 2022.

/s/ Donald Puckett
Donald Puckett

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and **ELIZABETH HERRERA,** Individually and as "Next Friend" to minor child Z.A.G.,	§	
Plaintiffs,	§	
v.	§	
THE CITY OF AUSTIN, LUIS SERRATO, AND GABRIEL GUTIERREZ,	§	**Case Nos. 22-CV-655, 23-CV-9-RP**
Defendants.	§	
Hendler Flores Law, PLLC, Intervenor.	§	

HENDLER FLORES LAW, PLLC'S
REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR LEAVE TO INTERVENE AND BRIEF IN SUPPORT

Hendler Flores Law, PLLC (HFL or Intervenor), hereby files its Reply to the Plaintiffs' Response to its Motion for Leave to Intervene (Response).

Plaintiffs attempt to convince the Court to deny the Motion rests on three main arguments, all flawed because they are not supported by the cases cited by Plaintiffs. Plaintiffs' creative arguments are not based on applicable law.

A. HFL's Intervention is Ripe, and None of the Cases Cited by Plaintiffs Support a Different Conclusion.

In their Response, Plaintiffs cite *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557 (Tex. 2006) for the proposition that Intervenor's notice is not ripe. However, *Hoover Slovacek* is not a case about ripeness, and it does not support Plaintiffs' argument. Plaintiffs rely on a portion of the opinion which stands for the proposition that a terminated lawyer

cannot demand payment of a contingent fee from a client before the client prevails on the underlying action. That is not what is happening here. HFL is not demanding payment from Plaintiffs now. To the contrary, HFL is merely noticing all parties of its interest. *Id.* at 562.

The other cases Plaintiffs cite similarly fail to support their ripeness argument. Plaintiffs refer to *In re Deepwater Horizon*, 546 Fed. Appx. 502, 504 (5th Cir. 2013), as *Lake Eugenie Lan & Dev., Inc. v. BP Exploration and Prod*. While the case actually mentions ripeness, unlike the other cases Plaintiffs cite, the issue is not analyzed in the opinion. In *Deepwater Horizon*, the State of Louisiana sued the operator of an offshore drilling rig alleging that the operator's actions caused an explosion in the Gulf of Mexico. A nonprofit coalition of fishery advocacy organizations moved to intervene for the sole purpose of objecting to a single aspect of the class settlement agreement – the manner of conducting a second-round distribution of funds. The district court concluded the intervention was not ripe, and the would-be intervenor never disputed that conclusion. Therefore, the appellate court affirmed without considering the merits of the issue.

In *Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm'n*, 834 F.3d 562 (5th Cir. 2016), a retailer sued the Commission alleging their regulation system violated various federal laws. The Texas Package Stores Association moved to intervene to defend the system. The Fifth Circuit reversed this Court's denial of the motion to intervene, allowing the intervention to proceed as of right. The word "ripe" is not contained in the opinion. The same goes for *Sierra Club v. Espy*, 18 F.3d 1202 (5th Cir. 1994), another case Plaintiffs try pigeon-holing into their argument against ripeness. In that case, the Fifth Circuit held that a timber purchaser's association was allowed to intervene as of right in an action by environmental groups against the United States Forest Service where the plaintiffs

challenged certain logging procedures, overturning the district court's denial of intervention.

Finally, in *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065 (5th Cir. 1970), another case cited on page 10 of the Response, the Fifth Circuit held the district court's denial of the motion to intervene was an abuse of discretion. The district court denied the motion based on timeliness, and the Fifth Circuit held that the timeliness requirement must flex in order to regulate intervention in the interest of justice, also recognizing the attitude allowing intervention "where no one would be hurt and the greater justice would be attained." Again, this was not a case about ripeness.

Plaintiffs' strained interpretations of these cases do not support their argument. Neither does their bald assertion of "severe[] prejudice[]" (Response, at 11) in the event Intervenor exercises its right. Plaintiffs also accuse HFL of disclosing confidential information in its Motion. This is another baseless accusation. Texas Disciplinary Rule of Professional Conduct 1.05(c)(5) provides that "a lawyer may reveal confidential information … "[t]o the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client." Plaintiffs' current counsel, Mr. Puckett, has waged a large-scale attack on HFL and its CEO Scott Hendler—contemporaneously filing a civil lawsuit alleging "fraud" in Collin County, a grievance with the Texas State Bar against Mr. Hendler, and a claim with the Texas Workforce Commission (which ruled against him and upheld its conclusions after his appeal). In fact, Mr. Puckett called one of the named Plaintiffs as a witness in the TWC hearing to testify against HFL and Mr. Hendler. Yet the Response cries "severe prejudice" that would result from "be[ing] required to use privileged and confidential information to

defend against HFL's proposed intervention claim" (Response, at 13-14), without alerting the Court to this all-fronts attack and the Plaintiffs and their counsel's mutli-pronged litigation against him. Plaintiffs cannot attack their former counsel and then attempt to prevent him from defending against their baseless accusations. The Texas Disciplinary Rules state otherwise.

At any rate, Plaintiffs' arguments related to disclosure of privileged and confidential information in order to defend against HFL's claim are premature. As should be clear from its motion, Intervenor's intention is merely to protect its claimed fee interest should there be a recovery. Even more, while Plaintiffs neither explain nor articulate what "confidential information" would "severely prejudice" them if disclosed to the defendants, they contradictorily argue that "HFL's proposed intervention claim arises from disputed facts that do not overlap substantially with the disputed facts involved with Plaintiffs' asserted claims under 42 U.S.C. [Section] 1983 …." (Response, at 15). Plaintiffs apparently argue out of both sides of their mouth—claiming on the one hand that granting intervention would require revelation of case-related information that would prejudice them, while on the other that the intervention does not overlap with their case-related claims.

The Court should recognize Intervenor's right and none of the arguments Plaintiffs propound in this section of their response support otherwise.

B. This Court has Supplemental Jurisdiction.

Plaintiffs also argue in their Response that HFL lacks an independent basis for Article III jurisdiction. Specifically, with relation to supplemental jurisdiction, Plaintiffs argue that "Courts within the Fifth Circuit have frequently denied intervention to a terminated contingent-fee lawyer who cannot establish federal jurisdiction over the proposed intervention claim." Response, at 16.

Two of the cases cited, however, held that the "amount in controversy" requirement led the courts to lack jurisdiction. *See Samuels v. Twin City*, 602 Fed.Appx. 209, 210 (5th Cir. 2015); *Griffin v. Lee*, 621 F.3d 380, 383-87 (5th Cir. 2010). And in another case Plaintiffs cite, the federal court remanded the action to state court so that the intervenor who was not diverse could be made part of the suit. *Causey v. State Farm*, No. CV 16-9660, 2018 WL 2980066, at *2 (E.D. La. June 14, 2018).

C. Intervenor's Motion Meets the Requirements of F.R.C.P. 24(a)(2).

Plaintiffs finally argue that HFL has not met the requirements for intervention under F.R.C.P. 24(a)(2). These arguments also fail.

In arguing against HFL's Motion, Plaintiffs respond that "Texas common law recognizes an attorney retaining lien over property that actually comes into the attorney's possession, but … does not allow an attorney to hold a charging lien over the subject matter of a client's lawsuit or future proceeds of a client's lawsuit." (Response, at 17)(emphasis omitted). In support of that argument, Plaintiffs cite two cases, one from 1867 and the other from 1918. Response, at 17, fn. 63. Plaintiffs also assert that "the Texas Commission on Professional Ethics issued an opinion in 2011 holding that the Texas rules of ethics strictly prohibit an attorney from obtaining a contractual charging lien from a client." Response, at 17.

Plaintiffs' assertion that HFL's claim is prohibited by the "Texas rules of attorney ethics" is incorrect. Texas Disciplinary Rule of Professional Conduct 1.08(h) addresses the situation (unlike what HFL did by contract with Plaintiffs) where a lawyer attempts to own some portion of the client's claims, such that the lawyer becomes a co-plaintiff or has separate interests that may conflict with the client's interests. Texas Ethics Opinion 610 refers to a situation where a lawyer has acquired a "security interest in the subject matter of the litigation," referring to the type of

interest prohibited by 1.08. Unfortunately, Ethics Opinion 610 does not quote the language of the agreement, making it difficult to use the opinion as an aid to analysis of other fee agreements. Neither Rule 1.08 nor Ethics Opinion 610, nor any other Texas law prohibits a lawyer's contractual lien on a client's recovery (such as the one created in the HFL retainer agreement) to secure the lawyer's contingent fee.

In *Mount Spelman & Fingerman, P.C. v. GeoTag, Inc.*, 70 F. Supp. 3d 782 (E.D. Tex. 2014), after considering Rule 1.08(h) and Ethics Opinion 610, the court held that the former law firm's contractual lien was not barred as a matter of Texas legal ethics. The law firm, MSF, contended that the attorney-client agreement gave it a contractual lien over all amounts recovered by GeoTag as a result of enforcing a certain patent in all cases filed within certain jurisdictions. MSF sent letters to defendants notifying them of its lien and GeoTag moved to enjoin MSF from making such demands on the defendants. GeoTag argued that the lien was unethical or should only cover existing settlements at the time of MSF's discharge. The court held that the lien was not barred as a matter of legal ethics. In its discussion of Ethics Opinion 610, the court noted: (1) the opinion is not precedential, as such opinions do not have the force of law and (2) Ethics Opinion 610 appears in conflict with Ethics Opinion 449 (a prior opinion finding that acquiring an interest in the property subject to a dispute for which the lawyer represents the client is equivalent to contracting for a contingent fee and therefore allowed). After dismissing Ethics Opinion 610 as neither controlling nor providing helpful advisory guidance, the court agreed with its sister courts

which have recognized that a contract may establish an attorney's lien[1] for money received in judgment or settlement of a matter. *Id.* at 786.[2]

Plaintiffs also cite *Ross v. Marshall* in support of the claim that HFL lacks an interest in the property or transaction that is the subject of the litigation. Based on *Ross*, the claim is that HFL's interest in the litigation is only "indirect." In *Ross*, an African American family brought tort and civil rights claims against a father whose child burned a cross in the family's yard. The defendant was held vicariously liable for $10,000,000 in damages. After judgment, the defendant's homeowner's insurer sought to intervene. The Fifth Circuit held that the insurer had a sufficient direct interest in the case to intervene as of right. The brief opinion addresses how defending an insured under a full or limited reservation of rights can affect whether the insurer's interest is direct or indirect. *Ross v. Marshall*, 456 F.3d 442, 443-44 (5th Cir. 2006). In stating, "By definition, an interest is not direct when it is contingent on the outcome of a subsequent lawsuit," the *Ross* court cited two other insurance cases: *Restor-A-Dent Dental Labs, Inc. v. Certified Alloy Prods., Inc.*, 725 F.2d 871 (2d Cir. 1984) and *Travelers Indemnity Co. v. Dingwell*, 884 F.2d 629 (1st Cir. 1989). Plaintiffs cannot present the Court with a case holding that a lawyer's fee interest in a former client's recovery is not sufficiently direct for Rule 24(a) because no case has held that way. To the contrary, cases cited and discussed by HFL in its Motion to Intervene make clear that an attorney's contingent fee interest is a sufficient interest under Rule 24(a) for intervention as of right.

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[1] The court also repeatedly referred to MSF's lien as a "charging lien," however arguing with Mr. Puckett over the correct label to place on HFL's valid lien is not necessary, and HFL will not further expend the Court's time and resources on semantics. However labeled, HFL's lien is proper under Texas law.

[22] Although the court found the lien to only cover the money received in settlement of disputes that were consummated while MSF was employed by GeoTag, that limitation was based on the precise language of the attorney-client contract itself – language that is different from the language at issue in the HFL retainer agreement.

Also, in the majority of the cases cited by Plaintiffs, the underlying parties settled their claims. That is not where these cases are procedurally. None of the parties outside of Intervenor can or will adequately represent Intervenor's interests. *See Adam Joseph Res. V. CAN Metals, Ltd.*, 919 F.3d 856, 868 (5th Cir. 2019)(holding that after an attorney has been discharged without cause, the parties to the underlying case will not concern themselves with the formers attorney's interest.). As *Adam Joseph Res.* held, "a law firm that ha[s] been discharged by its client must be allowed to intervene as of right in a suit to protect its contingent fee interest in any recovery by its former client." *Adam Joseph Res.*, 919 F.3d at 866 (citing *Gaines v. Dixie Carriers, Inc.*, 434 F.2d 52 (5th Cir. 1970). The Fifth Circuit has consistently held that a contingent attorney's fee suffices as an "interest relating to the property or transaction that is the subject of the action" and that a law firm discharged without cause after performing work for the client "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." *Adam Joseph Res.*, 919 F.3d at 866-67. This gives the Court supplemental jurisdiction over the matter.

Plaintiffs' argument that "HFL has other ways to enforce its rights" is no bar to its right to intervene here. Indeed, where the parties will certainly *not* adequately represent its interests, HFL seeks to put all parties on notice with its Motion and ask the Court's granting of its right to intervene. *Supra*. Intervenor takes no position on whether the claim is stayed or not. The purpose and intent of the petition is to put all parties on notice of Intervenor's claim for if and when plaintiffs obtain a recovery.

D. CONCLUSION

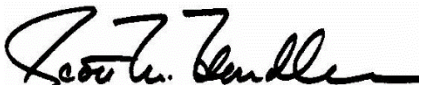
WHEREFORE, Intervenor HFL asks that the Court grant its Motion for Leave to Intervene, allow it to file its Plea in Intervention, and grant it such other and further relief to

which Intervenor may be entitled at law or in equity.

Dated: July 24, 2023

Respectfully submitted,

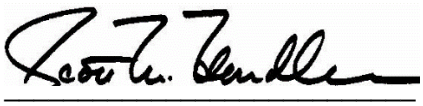
HENDLER FLORES LAW, PLLC



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Austin, Texas 78746
Telephone: (512) 439-3200
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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system on July 24, 2023.



Scott M. Hendler

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR.,
INDIVIDUALLY AND AS "NEXT FRIEND" TO MINOR CHILD Z.A.G. AND
ELIZABETH HERRERA
(AKA ELIZABETH GONZALES),
INDIVIDUALLY AND AS "NEXT FRIEND" TO MINOR CHILD Z.A.G.,

Plaintiffs,

v.

Nos. 1:23-CV-00655-RP
1:23-CV-00009-RP

CITY OF AUSTIN, LUIS SERRATO, AND **GABRIEL GUTIERREZ**,

Defendants.

ORDER

Before the Court is Intervenor's Motion for Leave to File Plea in Intervention (ECF No. 43). Having considered the Motion, relevant docket entries, and applicable law, the Court **GRANTS** the Motion.

SO ORDERED on this _____ **day of July 2023.**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR. and ELIZABETH HERRERA, Plaintiffs, v. CITY OF AUSTIN, Defendant.	§ § § § § § § § § §	1:22-CV-655-RP

ALEX GONZALES, SR., individually as a wrongful death beneficiary of Alex Gonzales, Jr., and as the Representative of the Estate of Alex Gonzales, Jr., Deceased, and ELIZABETH HERRERA, aka ELIZABETH GONZALES, individually and as a wrongful death beneficiary of Alex Gonzales, Jr., Plaintiffs, v. THE CITY OF AUSTIN, GABRIEL GUTIERREZ, and LUIS SERRATO, Defendants.	§ § § § § § § § § § § § § § § § §	1:23-CV-9-RP

ORDER

Before the Court is Movant Hendler Flores Law PPLC's ("HFL") motion to intervene, (Dkt. 32).[1] Plaintiffs Alex Gonzales, Sr. and Elizabeth Herrera ("Plaintiffs") filed a response, (Dkt. 37), and HFL filed a reply, (Dkt. 39). Having reviewed the motion, the parties' briefing, and the relevant law, the Court will grant the motion to intervene.

[1] In the related case, 1:23-cv-655-RP, Movant filed an identical motion to intervene. (Dkt. 43). For convenience, the Court will address the motions in one consolidated order, and all references will be to the 1:23-cv-9-RP case.

I. BACKGROUND

This case concerns the shooting of Alex Gonzales, Jr. by Austin Police Department Officers Luis Serrato and Gabriel Gutierez. (Compl., Dkt. 1). On January 7, 2020, Plaintiffs retained HFL through a signed, written retainer agreement ("the Agreement") to represent them in connection with the instant litigation. (Mot. Intervene, Dkt. 32, at 2). HFL agreed to represent Plaintiffs on a contingency basis, taking up to 40% of any settlement, verdict, or recovery obtained in the matter. (*Id.*). It also authorized reimbursement of expenses from any settlement recovery. (*Id.*). The Agreement further provides that HFL may create a charging lien to secure recovery of fees in the event that Plaintiffs terminate HFL without cause. (*Id.*). Finally, the Agreement allows HFL to keep 40% of its attorney's fees even if representation ends prior to recovery. (*Id.*).

HFL alleges that it dedicated significant amounts of time to Plaintiffs' case by investigating and filing the two instant suits and beginning discovery with the Austin Police Department. (*Id.*). During the course of their representation, HFL also worked with Plaintiffs on ancillary matters, such as probate, family law, and grief support, incurring expenses over $65,000. (*Id.*). HFL alleges that it has not been reimbursed for these expenses. (*Id.*). On March 24, 2023, HFL received a letter from an outside law firm, informing it that Plaintiffs intended to discharge HFL from representing them in this case and transfer their representation to Donald Puckett of Devlin Law Firm LLC. (*Id.* at 3). The parties contest the reason for this discharge, with HFL arguing that it was the result of wrongful interference by Plaintiffs' new counsel and without good cause. Plaintiffs contend that HFL engaged in professional negligence and breached its fiduciary duty, leading to the discharge.
(Pls.' Resp., Dkt. 37, at 1).

On May 12, 2023, HFL filed a motion to intervene as of right. (Dkt. 27). Plaintiffs responded, (Dkt. 28), and HFL filed an amended motion on June 12, 2023. (Mot. Intervene, Dkt. 32). HFL argues that it is entitled to intervene under Rule 24(a)(2) because it has an interest in a

monetary recovery through the contingency recovery in its agreement. (*Id.* at 4). HFL argues that Texas law permits attorneys to impose a charging lien as a way of securing payment of their fees and expenses and allows the attorneys to sue for their recovery. (*Id.* at 4–5).

Plaintiffs oppose the motion on several grounds. They argue that the Court lacks subject-matter jurisdiction over the proposed intervention because diversity citizenship is lacking. (Pls.' Resp., Dkt. 37, at 14). They also contend that the motion is procedurally unripe and would force them to disclose privileged information in order to show that HFL was terminated for good cause. (*Id.* at 12–14). Finally, Plaintiffs argue that HFL lacks an interest in the property or transaction that is the subject of this litigation under Rule 24 because the interest is purely contingent and the charging lien is prohibited by Texas ethics rules. (*Id.* at 24).

II. LEGAL STANDARD

Intervention by right is governed by Federal Rule of Civil Procedure 24(a). To intervene by right, the prospective intervenor either must be "given an unconditional right to intervene by a federal statute," Fed. R. Civ. P. 24(a)(1), or must meet each of the four requirements of Rule 24(a)(2):

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Texas v. United States, 805 F.3d 653, 657 (5th Cir. 2015). "Although the movant bears the burden of establishing its right to intervene, Rule 24 is to be liberally construed." *Id.* (citations omitted). "Federal courts should allow intervention where no one would be hurt and the greater justice could be attained." *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir.1994) (internal quotation marks omitted). However, the Fifth Circuit has also cautioned courts to be "circumspect about allowing intervention of right by public-spirited citizens in suits by or against a public entity for simple

reasons of expediency and judicial efficiency." *City of Hous. v. Am. Traffic Sols., Inc.*, 668 F.3d 291, 294 (5th Cir. 2012).

III. DISCUSSION

The Court will first address whether it has subject-matter jurisdiction over the plea in intervention. Finding that it does, it will turn to whether the motion is procedurally ripe and meets the requirements under Rule 24.

A. Subject-Matter Jurisdiction

Plaintiffs oppose the motion to intervene on the basis that the Court would lack subject-matter jurisdiction over HFL's claim. (Pls.' Resp., Dkt. 37, at 14). "[A]n intervenor of right must demonstrate Article III standing when it seeks additional relief beyond that which the plaintiff requests." *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017). Because HFL seeks to recover under breach of contract, while Plaintiffs bring claims for violations of 42 U.S.C. § 1983, HFL must establish federal jurisdiction. (Pls.' Resp., Dkt. 37, at 14). Plaintiffs argue that this Court cannot exercise jurisdiction over the intervention because HFL raises only state law claims against non-diverse parties, since everyone in this case resides in Texas. (*Id.* at 14–15). In its reply, HFL argues that Plaintiffs' response only cites cases dealing with claims that do not meet the requisite amount-in-controversy. (Movant's Reply, Dkt. 39, at 4–5).

Both parties miss the mark. Plaintiffs' complaint arises under federal question jurisdiction. (*See* Compl., Dkt. 1, at 28–33 (pleading claims under 42 U.S.C. § 1983 for violations of the Fourth and Fourteenth Amendments)). Accordingly, this Court is vested with subject-matter jurisdiction because the action arises under the Constitution and laws of the United States. 28 U.S.C. § 1331. And under 28 U.S.C. § 1367(a), district courts may exercise supplemental jurisdiction over claims that "form part of the same case or controversy" as the plaintiff's claims. Moreover, § 1367(a) states: "Such supplemental jurisdiction shall include claims that involve the joiner or intervention of

additional parties." 28 U.S.C. § 1367(a). Plaintiffs briefly argue that the case does not involve the same case or controversy as the plea in intervention, but this misreads the statute, which explicitly extends supplemental jurisdiction to the intervention of additional parties. *Id.* Because the Court has federal question jurisdiction over Plaintiffs' claims, it has supplemental jurisdiction over claims in intervention that meet the requirements of Rule 24. *See Chambers Med. Found. v. Chambers*, 236 F.R.D. 299 (W.D. La. 2006), a*ff'd sub nom. Chambers Med. Found. v. Petrie*, 221 Fed. Appx. 349 (5th Cir. 2007) (unpublished) ("In cases where original jurisdiction is grounded upon a federal question, 28 U.S.C. § 1331, supplemental jurisdiction ordinarily attaches to the intervention without further ado.").

Plaintiffs' remaining argument on diversity jurisdiction is unavailing. They argue that this Court lacks jurisdiction over HFL's intervention because it involves non-diverse parties. Under 28 U.S.C. § 1367(b), a court cannot exercise supplemental jurisdiction over claims by plaintiffs, including intervening plaintiffs, that would be inconsistent with the requirements of diversity jurisdiction *if the civil action is based on diversity jurisdiction*. Because this case does not involve diversity jurisdiction, the § 1367(b) exception to supplemental jurisdiction is inapplicable. As the Court's original jurisdiction is based on the existence of a federal question, it has supplemental jurisdiction over the claims in intervention.

B. Whether the Motion is Ripe

Next, Plaintiffs argue that the proposed intervention is not ripe, and that they would be "severely prejudiced" if HFL is allowed to intervene at this time. (Pls.' Resp., Dkt. 37, at 11). Plaintiffs argue at length that public policy favors a client's freedom to select and discharge lawyers of their choosing. (*Id.* at 11–16). However, the cases cited by Plaintiffs do not lead to the proposition that HFL's claim is unripe. Plaintiffs cite *Hoover Slovacek LLP v. Watson*, 206 S.W.3d 557, 560 (Tex. 2006), but that case does not mention ripeness. In *Hoover*, the Texas Supreme Court denied immediate recovery to a discharged contingent-fee lawyer who sought immediate payment

regardless of whether the client actually recovered in the underlying litigation. *Id.* at 562. This is simply not applicable to HFL's claim, which seeks payment only upon Plaintiffs' recovery. The statement from *Hoover Slovacek* that "a contingent-fee lawyer is entitled to receive the specified fee only when and to the extent the client receives payment" simply does not provide support for the notion that HFL's intervention is unripe. *Id.* (cleaned up). Another case cited by Plaintiffs, *In re Deepwater Horizon*, 546 Fed. Appx. 502, 504 (5th Cir. 2013), briefly mentions ripeness, but deals with a party who attempted to intervene so it could potentially raise objections to a class-action compensation distribution program. And in that case, the intervening party effectively admitted that its intervention was premature. *Id.* at 506. This is simply not analogous to HFL's attempt to intervene in pending and ongoing litigation so that it may recover part of any payout. Plaintiffs' remaining case citations simply do not deal with ripeness at all.[2] Therefore, the Court sees no reason to deny HFL's motion to intervene as unripe.

C. Rule 24 Requirements

To intervene by right, the prospective intervenor either must be "given an unconditional right to intervene by a federal statute," Fed. R. Civ. P. 24(a)(1), or must meet each of the four requirements of Rule 24(a)(2):

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Texas v. United States, 805 F.3d 653, 657 (5th Cir. 2015). "Although the movant bears the burden of establishing its right to intervene, Rule 24 is to be liberally construed." *Id.* (citations

[2] *See Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016) (discussing timeliness but not ripeness); *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994) (same); *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970) (same).

omitted). As HFL's intervention is based upon their breach of contract claim, they must satisfy the four requirements of Rule 24(a)(2).

1. Timeliness

"The most important consideration in determining timeliness is whether any existing party to the litigation will be harmed or prejudiced by the proposed intervenor's delay in moving to intervene." *McDonald*, 430 F.2d at 1073. Contrary to Plaintiffs' argument that the intervention comes too early, timeliness typically examines whether a motion to intervene is filed *too late*. *See Wal-Mart Stores*, 834 F.3d at 565–66.[3] With the exception of the inapplicable *In re Deepwater Horizon* case, Plaintiffs cite no cases holding that a motion to intervene is untimely because it was filed too early in litigation. 546 Fed. Appx. at 504. Accordingly, the motion to intervene, which was filed shortly after HFL's termination as counsel and in the early stage of litigation, is timely filed.

2. Interest Relating to the Transaction

Next, Plaintiffs contend that HFL lacks an interest related to the property or transaction at issue in the case. (Pls.' Resp., Dkt. 37, at 16). Here, Plaintiffs present two discrete arguments: (1) that Texas law does not authorize charging liens except on retainer fees and (2) that such a lien, even if lawful, does not constitute a property interest under Rule 24. Both arguments are unavailing.

[3] The Fifth Circuit uses a four-part test to determine timeliness of interventions.

> Determining the timeliness of a motion to intervene entails consideration of four factors: (1) The length of time during which the would-be intervenor actually knew or reasonably should have known of its interest in the case before it petitioned for leave to intervene; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as it knew or reasonably should have known of its interest in the case; (3) the extent of the prejudice that the would-be intervenor may suffer if intervention is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely.

Sierra Club v. Espy, 18 F.3d 1202, 1205 (5th Cir. 1994). The first two factors apply only to arguments that intervention comes too late. And the third and fourth factors do not counsel against intervention as untimely because the harms that Plaintiffs will purportedly endure, such as disclosing confidential information, will be true so long as HFL intervenes sometime between now and final judgment. Moreover, such harms can be remedied by simply addressing HFL's claims after any recovery by Plaintiffs.

Federal and state courts in Texas dealing with the issue of attorney liens have found that they are permissible. *Mt. Spelman & Fingerman, P.C. v. GeoTag, Inc.*, 70 F. Supp. 3d 782, 786 (E.D. Tex. 2014) (collecting cases). Plaintiffs rely on a Texas Ethics Opinion that suggests the state's ethics rules prohibit an attorney from obtaining a charging lien from a client. (Pls.' Resp., Dkt. 37, at 23) (citing Tex. Comm. On Professional Ethics, Op. 610 (2011))). In Texas, ethics opinions do not carry the force of law, but are advisory only. *Mt. Spelman*, 70 F. Supp. 3d at 786. District courts must examine "Texas law to determine whether an attorney holds a lien for fees against a judgment or settlement amount." *United States v. Betancourt*, CRIM. B–03–090–S1, 2005 WL 3348908 (S.D. Tex. Dec. 8, 2005), *aff'd*, 257 Fed. Appx. 785 (5th Cir. 2007). Plaintiffs cite *Betancourt* for the proposition that no "common law" attorney lien exists in Texas law, but HFL does not assert its lien under "common law." (Pls.' Resp., Dkt. 37, at 17 n.64 (citing *Betancourt*, 2005 WL 3348908, at *3)). HFL asserts a direct, contractual lien. The *Betancourt* opinion explicitly acknowledged that contractual leans *do* exist under Texas law. 2005 WL 33489808, at *3 ("Under Texas law, a contract may establish an attorney's lien for money received in judgment or settlement of a matter."). Plaintiffs' argument omits the key distinction that Texas courts have made between common law and contractual liens, and their reasoning fails as a result.

Next, Plaintiffs contend that "HFL fails to meet the requirements of [Rule 24(a)(2)] because HFL has, at most, an indirect interest in the subject of this litigation." (Pls.' Resp., Dkt. 37, at 24 (citing *Ross v. Marshall*, 456 F.3d 442, 443–44 (5th Cir. 2006))). This argument runs headfirst into repeated Fifth Circuit caselaw affirming the principle that an attorney has an interest in the outcome of litigation when they attempt to recover on a contingency fee. *Gilbert v. Johnson*, 601 F.2d 761, 767 (5th Cir. 1979); *Gaines v. Dixie Carriers, Inc.*, 434 F.2d 52, 54 (5th Cir. 1970); *Keith v. St. George Packing Co., Inc.*, 806 F.2d 525, 526 (5th Cir. 1986); *Adam Joseph Resources v. CNA Metals Ltd.*, 919 F.3d 856, 866 (5th Cir. 2019) ("From *Gaines* forward, this circuit has consistently held that an attorney's

contingent fee is a sufficient 'interest relating to the property or transaction that is the subject of the action' for purposes of intervention."). Plaintiffs ignore this line of cases, and instead characterize HFL's interest as hypothetical because the Court has not yet determined whether HFL's contract is valid and enforceable. (*Id.*). An interest is not hypothetical simply because the opposing party may assert an affirmative defense—an intervenor does not need to conclusively show that they will succeed on the merits in order to have an interest in the outcome. To hold otherwise would be to deny intervention in any case where there is at least some doubt about the intervening party's success. An established line of Fifth Circuit cases has held that attorneys who seek to recover on contingency fees have an interest at stake in the litigation, and Plaintiffs' arguments do not persuade the Court to deviate from those cases' reasoning.

3. Ability to Protect Interest

Next, Plaintiffs argue that HFL should not be allowed to intervene because they can protect their contingency fee interest through filing another lawsuit. (Pls.' Resp., Dkt. 37, at 19). The Court need not spend time on this argument because it has been squarely rejected by the Fifth Circuit. *Adam Joseph*, 919 F.3d at 867 ("Indeed, we have explicitly interpreted *Gaines* to dismiss the argument that an attorney's ability to institute a future proceeding to recover fees negates intervention as of right . . . ."); *United States v. Tex. E. Transmission Corp.*, 923 F.2d 410, 415–16 (5th Cir. 1991) (holding same); *Skinner v. Weslaco Indep. Sch. Dist.*, 220 F.3d 584, 584 (5th Cir. 2000) (same). Because Plaintiffs make no attempt to differentiate these cases, the Court finds their argument unpersuasive. Intervention will allow HFL to protect its interest in the contingency fee recovery, so it has met this this third element.

Finally, Plaintiffs do not contest that HFL's interests are not represented by any existing party. It is evident that neither Plaintiffs nor Defendants will adequately represent HFL in this case. Therefore, HFL has met the fourth element of intervention by right.

4. Remaining Grounds for Opposition

Finally, Plaintiffs oppose intervention on the grounds that it will "create a sideshow distraction that will complicate litigation of this case." (Pls.' Resp., Dkt. 37, at 19–20). Even accepting this as true, prejudice to a plaintiff is not a standalone reason to deny a timely motion to intervene. To the extent that the parties agree to a stay of the claims in intervention during discovery in this case, so as to mitigate any distractions or issues of privilege, they may submit a proposed order to that effect on or before August 16, 2023.

IV. CONCLUSION

For the reasons stated above, the Court finds that HFL is entitled to intervene as a matter of right in both cases. **IT IS THEREFORE ORDERED** that HFL's motion to intervene in 1:23-cv-9-RP, (Dkt. 32), is **GRANTED**. The Clerk of the Court shall file HFL's First Amended Plea in Intervention, (Dkt. 32-2).

IT IS FURTHER ORDERED that HFL's motion to intervene in 1:22-cv-655-RP, (Dkt. 43), is **GRANTED**. The Clerk of the Court shall file HFL's First Amended Plea in Intervention, (Dkt. 43-2).

IT IS FURTHER ORDERED that the parties shall file a joint and agreed proposed order to stay the claims in intervention, if at all, on or before August 16, 2023.

SIGNED on August 2, 2023.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and ELIZABETH HERRERA, Plaintiffs. v. **CITY OF AUSTIN, LUIS SERRATO, AND GABRIEL GUTTIEREZ**, Defendants. Hendler Flores Law, PLLC, Intervenor.	§ § § § § § § § § § § § §	**Case Nos. 22-CV-655, 23-CV-9-RP**

FIRST AMENDED PLEA IN INTERVENTION
BY HENDLER FLORES LAW, PLLC

Hendler Flores Law, PLLC (HFL or Intervenor) files, pursuant to Federal Rule of Civil Procedure 24(a)(2), this Plea in Intervention and shows the Court the following:

I.

PARTIES AND SERVICE OF PROCESS

1. **Intervenor Hendler Flores Law, PLLC** (HFL) is a professional limited liability company with its principal place of business in Travis County, Texas.

2. **Respondent Alex Gonzales, Sr.** is a citizen of Texas and a resident of Bastrop County, Texas. Alex Gonzales, Sr. is the father and next of kin of Alex Gonzales, Jr. Alex Gonzales, Sr. may be served with process by serving counsel of record via the Court's CM/ECF system.

3. **Respondent Elizabeth Herrera** (aka Elizabeth Gonzales) is a citizen of Texas and a resident of Bastrop County, Texas. Elizabeth Herrera is the mother and next of kin of Alex

Gonzales, Jr. Elizabeth Herrera may be served by serving her counsel of record via the Court's CM/ECF system.

4. **Minor child Z.A.G.** is a person under the age of eighteen (18) who is a citizen of Texas and, on information and belief, is a resident of Travis County, Texas. This action is brought on behalf of Z.A.G. by Alex Gonzales, Sr. and Elizabeth Herrera as "Next Friends." Z.A.G. may be served with process through service on counsel for Alex Gonzales, Sr. and Elizabeth Herrera as well as on counsel for **Z.A.G.'s** custodial parent's attorney, Jeff Edwards, The Edwards Law Firm, 603 West 17th Street, Austin, Texas 78701.

II.

FACTS

5. On January 7, 2020, Respondents retained HFL as memorialized by a signed, written Attorney Retainer Agreement (Retainer Agreement) employing HFL to represent them in connection with the instant litigation.

6. The Retainer Agreement includes the basis for the charging of legal fees as a contingent percentage of any monetary recovery in the litigation by settlement, judgment, or otherwise. It provides that the plaintiffs agreed to pay a contingent attorneys' fee of 40% of any settlement, verdict, or recovery obtained in the matter to compensate HFL for its legal services in the case. The Retainer Agreement also set forth that HFL would recover the expenses it advanced on the Respondents' behalf from the Respondents' net amount of any monetary settlement, verdict, or recovery, after the deduction of the 40% attorney's fee.

7. The Retainer Agreement also provides, and the Respondents agreed, that HFL has a charging lien to secure recovery of its fees and expenses in the matter, and that if Respondents terminated HFL without cause, HFL would continue to have a claim for its full

percentage contingent attorneys' fee of 40% of the gross recovery, including its expenses incurred up to the time of termination. The Retainer Agreement states that if Respondents were to terminate HFL without cause and later obtain a recovery, the full percentage of the contingent fee would remain due, in addition to expenses incurred prior to the date of termination from that recovery.

8. While representing Respondents, HFL investigated, researched, and filed two separate lawsuits on behalf of the Respondents; served and responded to written discovery; noticed and conducted depositions of two witnesses; ordered medical records; HFL facilitated a private autopsy; consulted experts and retained one expert on the subject of police excessive force; and reviewed thousands of pages of records and hours of video. HFL also incurred several significant expenses for Respondents' benefit, including assisting the family with ancillary matters including probate, memorials, grief support and management, and family law, among other services. Those expenses are, at a minimum, $65,136.95. Respondents have not repaid these expenses.

9. On March 24, 2023, without any notice whatsoever, HFL received a letter from the Marconi Firm informing HFL that Respondents intended to discharge HFL effective April 7, 2023, and transfer their representation to Mr. Puckett and his new employer, the Devlin Law Firm LLC. Respondents discharge of HFL was without cause. HFL subsequently withdrew and transferred the file to the Devlin Law Firm on April 24, 2023, and this Court granted HFL's motion to withdraw on May 2, 2023.

III.

CLAIM

10. Intervenor's interest in any monetary recovery arises from a written contingent

fee contract with Intervenor that Respondents signed providing for a fee equal to forty percent of any monetary recovery Respondents obtained in this litigation. An attorney's right to assert a lien against client property to ensure payment of professional fees has been recognized at common-law since the early eighteenth century. *See, e.g.,* Everett, Clarke & Benedict v. Alpha Portland Cement Co., 225 F. 931, 935 (2d Cir. 1915) (summarizing history of attorney liens). The charging lien that Respondents contractually agreed to in the Retainer Agreement retaining Intervenor applies to the proceeds of a recovery and contrary to Respondents' current attorneys, does not provide for a security interest in the underlying case.[1] The contractually agreed to charging lien protects the attorney's fees and expenses from the proceeds of any judgment, decree or other order in his client's favor entered or made in such proceeding.

11. Texas common law establishes charging liens as a way for attorneys to secure recovery of their fees and expenses. *See, e.g.*, *Rotella v. Cutting*, No. 02-10- 00028-CV, 2011 WL 3836456, at *5 (Tex. App.—Fort Worth Aug. 31, 2011, no pet.); *Tarrant Cty. Hosp. Dist. v. Jones*, 664 S.W.2d 191, 196 (Tex. App.—Fort Worth 1984, no pet.). In Texas, when a client employs an attorney on a contingent-fee basis and then discharges the attorney without cause before the attorney completes the representation, the attorney may sue to enforce the contract and recover the amount of the contracted compensation from any monetary damages that the client subsequently recovers. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 561 (Tex. 2006) (citing *Mandell & Wright v. Thomas*, 441 S.W.2d 841, 847 (Tex. 1969)). The ability of an attorney discharged without cause to recover for the services he rendered dates back at least as far as 1855. *Myers v. Crockett*, 14 Tex. 257 (1855). Respondents discharged HFL without

[1] To the extent a court interprets the contractual language describing the charging lien as providing for a security interest in the underlying claim as opposed to the proceeds from a recovery on the underlying claim, Intervenors expressly disavow any such interest in the Respondents' underlying claim.

notice and without good cause.

12. Disposition of the case through a negotiated agreement will almost certainly involve payment of a money recovery to Respondents. In that event, it will become exponentially difficult if not impossible for Intervenor to recover its fee. This is because the funds could be put out of reach through a structed settlement—a type of annuity for personal injury plaintiffs only—that will pay Respondents over a long period of time; alternatively, Respondents, may spend the funds and deplete them before Intervenor can recover its fees and expenses from the recovery, or Respondents may otherwise dispose of the funds before Intervenor could obtain its monetary interest through legal action.

13. Respondents have no incentive to protect HFL's interest in any monetary recovery they obtain in this matter because it will likely reduce their net recovery. That is because Respondents have hired replacement counsel who they purport to compensate through a percentage of any monetary recovery they obtain through the litigation. Similarly, none of the Defendants have any incentive to protect HFL's contingent fee interest in the recovery. In fact, if the matter is resolved through a negotiated agreement either before or after a verdict, it is standard practice for a Defendant to require a Plaintiff (Respondents in this case) to assume all responsibility for any party claiming an interest in the settlement funds. As such, Defendants have no incentive to protect HFL's interests in the recovery, and now Respondents interests conflict with HFL's because payment of HFL's fee risks reducing Respondents recovery on top of the fee that Respondents have agreed to pay its replacement counsel.

IV.

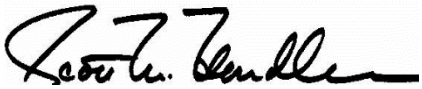
PRAYER

WHEREFORE, Intervenor requests citation and service be made as requested and that the Court award directly to Intervenor the expenses it has advanced and its share of any settlement, verdict, or other recovery to be paid by Defendants or judgment awarded against Defendants, in addition to such other and further relief to which Intervenor may be entitled at law or in equity.

Dated: June 12, 2023

Respectfully submitted,

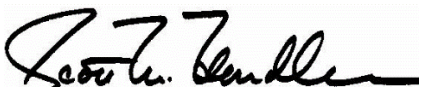
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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system on June 12, 2023.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Alex Gonzales, Sr., and **Elizabeth Herrera**	§	
Plaintiffs,	§	
v.	§	**Case No. 1:22-cv-655-RP**
City of Austin	§	
Defendant.	§	

PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

In accordance with Rule 15(a)(2) of the Federal Rules of Civil Procedure, Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera (aka Elizabeth Gonzales) (collectively the "Plaintiffs") file this Motion for Leave to File Second Amended Complaint. A copy of the proposed Second Amended Complaint and its Exhibits are attached as exhibits to this Motion.

Defendant City of Austin ("Defendant") is unopposed to the relief requested in this motion. Plaintiffs' Motion for Leave also is timely because all parties have agreed to a deadline of December 19, 2023, for amending or supplementing pleadings. *See* Joint Proposed Scheduling Order, -655 Case, [Dkt. No. 47].[1]

Rule 15(a) provides that a party may amend its pleading by leave of court and a "court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Accordingly, courts have held that leave to amend should generally be granted absent a substantial reason for denial. *See e.g., Foman v. Davis*, 371 U.S. 178, 182 (1962).

[1] Plaintiffs note that, to date, the Court has not entered an order approving the parties' Joint Proposed Scheduling Order.

Here, Plaintiffs seek to amend their pleading to add additional factual detail to the allegations set forth in Plaintiffs' First Amended Complaint based on discovery that has taken place in the case to date. Plaintiffs Second Amended Complaint does not add any new parties to this lawsuit, and it does not add any new legal claims or causes of action as compared to their First Amended Complaint.[2]

For the foregoing reasons, Plaintiffs hereby respectfully move the Court for leave to file their Second Amended Complaint, a copy of which is as an exhibit to this motion. Plaintiffs also provide the Court with a proposed order granting this motion.

[2] To be precise, Plaintiffs' Original Complaint and First Amended Complaint each asserted one cause of action under 42 U.S.C. §1983 against the City of Austin based on the conduct of both Officer Gutierrez and Officer Serrato. Plaintiffs' Second Amended Complaint pleads two separate causes of action against the City of Austin under 42 U.S.C. §1983—one based on the conduct of Officer Gutierrez, and a second based on the conduct of Officer Serrato. By pleading these two claims separately, however, Plaintiffs' Second Amended Complaint does not introduce any new legal claims or causes of action into this case.

Dated: August 22, 2023

Respectfully submitted,

/s/ Donald Puckett

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Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

I hereby certify that I personally conferred with counsel for the City of Austin prior to the filing of this motion, and counsel indicated that the City of Austin does not oppose the relief requested herein.

/s/ *Donald Puckett*
Donald Puckett

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ *Donald Puckett*
Donald Puckett

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Alex Gonzales, Sr., and **Elizabeth Herrera**	§	
Plaintiffs,	§	
v.	§	**Case No. 1:22-cv-655-RP**
City of Austin	§	
Defendant.	§	

ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Before the Court is Plaintiffs' Unopposed Motion for Leave to File Second Amended Complaint. Good cause having been shown, and the motion being unopposed, Plaintiffs' motion is hereby granted. Plaintiffs' may file their Second Amended Complaint.

SO ORDERED this _____ day of _____, 2023.

_____
Hon. Robert Pitman
United States District Judge

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G.,	§	**Case No. 1:22-cv-00655-RP**
Plaintiffs,	§	**JURY TRIAL REQUESTED**
v.	§	
City of Austin,	§	
Defendants.	§	

PLAINTIFFS' SECOND AMENDED COMPLAINT

To the Honorable Court:

1. This is a lawsuit about the policies and practices of the City of Austin that caused Austin police officers Luis Serrato and Gabriel Gutierrez to fatally shoot Alex Gonzales, Jr. ("Alex") on January 5, 2021, resulting in Alex's tragic and untimely death.

2. Alex's parents, Alex Gonzales, Sr., and Elizabeth Herrera (collectively the "Plaintiffs") bring this lawsuit to vindicate their son's civil rights and to hold the responsible parties accountable. Each Plaintiff asserts claims in his or her individual capacity as a wrongful death beneficiary of Alex Gonzales Jr. under Texas law. Each Plaintiff also asserts claims as "Next Friend" on behalf of minor child Z.A.G., who also is a wrongful death beneficiary of Alex Gonzales, Jr. under Texas law.[1]

[1] Plaintiffs and Plaintiffs counsel do not purport to represent the interests of Z.A.G. by asserting Z.A.G.'s wrongful death claims in this action, as stated in Plaintiffs' previously filed Notice of Non-Representation Concerning Minor Child Z.A.G. *See* Dkt. No. 45, filed on June 21, 2023. Plaintiffs also previously filed a Motion for Appointment of Guardian Ad Litem Pursuant to

I. PARTIES

3. Plaintiff Alex Gonzales, Sr. is a citizen of Texas and a resident of Bastrop County, Texas. His son, Alex Gonzales, Jr, was also from Bastrop County, Texas. As Alex Gonzales, Jr.'s biological father, Plaintiff Alex Gonzales, Sr. is a wrongful death beneficiary and, as such, brings this wrongful death action in his individual capacity pursuant to Texas Civil Practice and Remedies Code §§ 71.002(b), 71.004(b) and 42 U.S.C. §§ 1983, 1988.

4. Plaintiff Elizabeth Herrera (a/k/a Elizabeth Gonzales) is a citizen of Texas and a resident of Bastrop County, Texas. Her son, Alex Gonzales, Jr, was also from Bastrop County, Texas. As Alex Gonzales, Jr.'s biological mother, Plaintiff Elizabeth Herrera is a wrongful death beneficiary and, as such, brings this wrongful death action in her individual capacity pursuant to Texas Civil Practice and Remedies Code §§ 71.002(b), 71.004(b) and 42 U.S.C. §§ 1983, 1988.

5. Minor child Z.A.G. ("Z.A.G.") is a person under the age of eighteen (18) who is a citizen of Texas and, on information and belief, is a resident of Travis County, Texas. As the presumed biological child of Alex Gonzales, Jr., Z.A.G. is a wrongful death beneficiary pursuant to Texas Civil Practice and Remedies Code § 71.004(b). Each Plaintiff has standing to assert wrongful death claims on behalf of Z.A.G. pursuant to Texas Civil Practice and Remedies Code § 71.004(b). Each Plaintiff asserts claims on behalf of Z.A.G. in his or her capacity as "Next Friend" of Z.A.G. pursuant to Texas Civil Practice and Remedies Code §§ 71.002(b), 71.004(b) and 42 U.S.C. §§ 1983, 1988. Z.A.G. is a necessary party to this action because, under Texas law, the claims of all potential wrongful death beneficiaries must be joined in a single action.[2]

FRCP 17(c)(2) in order to ensure that the interests of Z.A.G. are adequately represented in this lawsuit. *See* Dkt. No. 30, filed on April 12, 2023.

[2] *See Ordonez v. Abraham*, 545 S.W.3d 655, 667 (Tex. App. – El Paso 2017) ("Texas undoubtedly requires that only one suit be filed to address the alleged negligent death of a person."); *Avila v. St. Luke's Lutheran Hosp.*, 948 S.W.2d 841, 850 (Tex. App. – San Antonio

6. Defendant City of Austin (herein the "City" or "Austin") is a Texas municipal corporation in the Western District of Texas which funds and operates the Austin Police Department ("APD") and the APD Training Academy.

II. JURISDICTION AND VENUE

7. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. §§ § 1331 and 1343.

8. The City is subject to general personal jurisdiction because it is a Texas municipality.

9. This Court has specific personal jurisdiction over the City because this case involves its conduct that occurred in Austin, Texas.

10. Venue for this case and the asserted causes of action are proper in the Western District of Texas, Austin Division pursuant to 28 U.S.C. § 1391(b) because all or a substantial portion of the events or omissions giving rise to each Plaintiff's claims occurred in the Western District of Texas, Austin Division.

III. FACTUAL ALLEGATIONS

A. Through its policies, practices, and customs, Austin trained its police officers to adopt a paramilitary culture that caused them to adopt a "warrior mindset" and an "us versus them" approach to policing that permitted, encouraged, and tolerated excessive force.

11. For many years prior to the fatal shooting of Alex Gonzales, Jr. on January 5, 2021, the City of Austin trained its police officers in ways that expressly and implicitly encouraged and approved of the use of excessive force in policing encounters with Austin residents. The Austin Police Department Training Academy used a training curriculum centered upon "paramilitary"

1997) ("The [wrongful death] act contemplates that only one suit shall be brought, which shall be for the benefit of all parties entitled to recover.").

training techniques that taught and reinforced a "paramilitary culture" throughout the APD. The APD Training Academy taught the officers to adopt a "warrior mindset" that encouraged an "us versus them" approach to citizen encounters during policing.

12. For many years prior to January 5, 2021, APD's cultivation of a paramilitary culture and promotion of the warrior mindset among APD officers was the predominant theme of all aspects of APD's officer training, beginning with cadets at APD's Training Academy, continuing through field training, and reinforced repeatedly in daily officer briefing exercises, ongoing officer training, and through chain-of-command review of officers' performance during real-world policing encounters.

13. APD's training and cultivation of a "warrior mindset" among its officers has long been the predominant theme of APD's officer training, and the "warrior mindset" has long been a central feature of APD's officer culture. APD's warrior mindset training, deeply instilled in each of its patrol officers, included at least the following specific elements as an integral part of its police training for many years prior to the death of Alex Gonzales, Jr.:

a. APD trained its officers and cultivated a warrior mentality that encouraged and required each officer to place his or her own individual safety above all other concerns. APD's officers were explicitly trained that the first rule of law enforcement is to make sure that the officer goes home at the end of every shift. APD's police officer training repeatedly emphasized the utmost importance of each officer protecting his or her own life and physical safety. APD trained its officers to place self-preservation ahead of every other concern in practically every policing scenario. APD placed officer self-protection at the core of its tactical training and field training exercises. In after-action reviews of actual policing situations, APD

officers were frequently reprimanded and disciplined for their decisions *not* to use force if the decision might have elevated a risk of harm to the officer in the scenario. APD explicitly trained its officers—constantly and repeatedly—that self-protection was the prime directive of APD police work.

b. APD trained its officers to have a warrior mentality that viewed the job of street-patrol duty to be a highly dangerous activity, and to be mindful that each officers' life and physical safety were *constantly* at risk. APD trained its officers that any ordinary encounter with any citizen could turn into a lethal force situation at a moment's notice. APD routinely showed videos to cadets that set forth sad and emotional stories of police officers that had been killed in the line of duty. APD's intense training on the potential dangers to officer safety was intended to instill and did instill a deep sense of fear into each APD officer. APD's training relied on and purposefully utilized this fear to push each officer further into APD's intended warrior mindset by triggering strong self-preservation instincts in each officer.

c. APD's officers were taught and encouraged to view the streets of Austin as a battlefield, and that the activity of policing was a battle that the officers must "win" to ensure the officer's own survival. Under this training, APD trained its officers in ways that caused and encouraged them to view ordinary citizens in everyday interactions as enemy combatants that must be dominated and controlled. APD's training caused and encouraged officers to adopt an "us versus them" mentality toward the citizens they are sworn to protect and serve.

d. APD's tactical training for citizen encounters placed domination of physical space and control of the civilian as the first and primary objective in training and exercises

related to police / citizen encounters. APD trained its officers to set the tone for citizen encounters by immediately establishing physical dominance and command over any scene. APD officers were trained that any citizen's failure to immediately accede to the officer's verbal commands and physical control of the space equates to non-compliance, immediately allowing the officer to take more aggressive steps to establish the officer's domination of the scene and control of the civilian.

e. APD trained its officers to have a warrior mindset that was constantly mindful of potential hidden dangers. APD trained its officers constantly to scan for small signs or cues to alert for the possible presence of a weapon or the possible non-compliant intent of a civilian. APD trained its officers to alert to potential danger for signs that could also be innocuous, such as a bulge in a person's waistband or an inflection in a person's voice. APD's training in this regard reinforced and intensified the fearful aspects of the warrior mindset described above, by teaching officers that their survival instincts should kick-in based on small and innocuous observations.

f. APD promoted its warrior mindset by training its officers with course materials, videos, field training exercises and simulations that placed the mantra of "Action Beats Reaction" as the centerpiece of all tactical training for policing. Under Action Beats Reaction principles, APD officers were taught that a subject would gain a tactical advantage if the officer waited to react to a subject's threatening actions. Under Action Beats Reaction principles, APD officers were taught to gain a tactical advantage over civilian subjects by acting first, in anticipation of threats or potential threats, before the civilian subject is able to take a first threatening action.

g. APD taught its officers to use Action Beats Reaction principles even in situations

of "uncertain danger"—in both lethal and non-lethal force situations—even if the officer is uncertain whether a civilian actually presents a danger at all. APD's lethal force training expressly taught and *encouraged* officers to be ready and willing to use lethal force in situations where they have a "reasonable belief" that a suspect *might* pose a *possible* lethal force risk to the officer or others.

h. APD reinforced the Action Beats Reaction principles by using "force continuum" or "force ladder" principles as a primary component of its officer use of force training. These force continuum principles expressly permitted and encouraged APD officers to stay "one step ahead" of the civilian subject upon whom an officer is using force in any policing situation. APD's "force ladder" training, coupled with its Action Beats Reaction training, taught and encouraged officers to move up the force ladder at every opportunity, with any de-escalation or tactical retreat training drowned out by other aspects of APD's warrior mindset teachings.

i. APD intentionally made its warrior mindset training and emphasis on "Action Beats Reaction" so pervasive in its officer training that the warrior mindset and associated tactical lessons were intended to become instinctively ingrained in each officer. For many years, APD's training academy used a military boot-camp style of training in which rigorous physical exercises and physical combat training were combined with a strict military chain-of-command style of interaction with classroom instructors and others. APD adopted these military-style training techniques for the purpose of fostering a warrior mindset in each of its officers that is intended by APD to be instilled deeply in each officer's psyche—at every moment, all the time.

14. For many years prior to the death of Alex Gonzales, Jr. on January 5, 2021, APD incorporated and reinforced its warrior mindset training in connection with its officer training regarding the use of lethal force and use of firearms. APD lethal force and firearms training for its officers included at least the following specific elements as an integral part of its police training:

a. APD taught and trained its officers that an officer's reluctance to use lethal force or hesitation to use lethal force would put the officer's own life and safety at risk as well as the life and safety of other officers. APD taught and trained its officers that, in cases where an officer was actually shot or killed in the line of duty, in almost all such cases the officer himself or herself (as well as other officers on scene) had failed to fire a weapon prior to the officer being shot. APD used these teachings and trainings to expressly encourage its officers to be "ready and willing" to use lethal force at all times, without hesitation.

b. APD incorporated "Action Beats Reaction" principles into its lethal force and firearms training to train its officers that they can and should use lethal force in a variety of situations before a lethal force threat to themselves or others has fully materialized. APD's "force ladder" training taught officers that they were permitted to use lethal force in situations where an actual lethal force threat from a subject had not yet materialized. APD trained and encouraged its officers to use lethal force even in situations of uncertain danger, where the officer does not have evidence to know that a lethal force danger is present at all.

c. APD's lethal force and firearms instruction taught and trained its officers that once an officer began using lethal force against a subject, the officer must continue to use lethal force by continuing to fire rapid shots at the targe (typically all shots

loaded in the magazine of the weapon) until the officer was sure that the "threat is eliminated" (*i.e.* until the civilian subject is dead or fully incapacitated).

d. The above-referenced aspects of APD's lethal force and firearms training were so pervasive in APD's training that it had the effect of drowning out any contrary training with respect to de-escalation training or tactical training that might reduce the need for officers to use lethal force in a variety of situations.

15. The City of Austin and APD knew well before the death of Alexander Gonzales, Jr. that APD's police training had long been the product of paramilitary training techniques that fostered a deeply-ingrained warrior mindset in APD's police officers (including but not limited to the specific aspects recited above), and that APD's paramilitary warrior mindset police training and culture was to blame for frequent use of excessive force by APD officers against civilians.

16. On May 22, 2020, Dr. Sara Villanueva delivered to then-Chief Brian Manley a Review Analysis and Strategic Plan of the Austin Police Department Training Academy (the "Villanueva Report"). At that time, Dr. Villanueva was the Organizational Development and Training Manager at the Austin Police Department. A copy of the Villanueva Report is attached to this complaint as Exhibit A, and it is incorporated herein by reference. On information and belief, Dr. Villanueva prepared and delivered her report within the scope of her authority as an employee and agent of the City of Austin.

17. After conducting a thorough "SWOT analysis" (assessing strengths, weaknesses, opportunities, and threats) of the APD Training Academy, Dr. Villanueva reported the following findings:

a. "[The] APD Training Academy operates under a paramilitary training format . . . ." (Exhibit A, page 7 of 18);

b. "There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-police services model. A growing body of research has shown that paramilitary-structured academies do not align well with the principles of community policing and problem solving which are based on collaborations and partnerships." (Exhibit A, page 7 of 18);

c. "The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime." (Exhibit A, page 10 of 18); and

d. "The warrior mindset, and the fear that drives it, must change." (Exhibit A, page 10 of 18.)

18. Each of the above-quoted findings from the Villanueva Report was true.

19. On December 29, 2020, Austin Chief Equity Officer Brion Oaks delivered a memorandum (herein the "Oaks Memorandum") to the Austin Mayor and City Council (via Nuria Rivera-Vandermyde) for the purpose of "provid[ing] a brief overview of two bodies of work documenting racial inequities within the Austin Police Department (APD)." (Exhibit B, page 1 of 152.) The first body of work was a series of evaluations prepared by a third-party evaluator, The Peace Mill Research and Communications (herein the "Peace Mill Evaluations"). (Exhibit B, pages 4-107 of 152.) The second body of work was a report prepared by third-party evaluator Joyce James Consulting (herein the "Joyce James Report"). (Exhibit B, pages 108-152 of 152.) The Peace Mill Evaluations and the Joyce James Report each were prepared at the direction and authorization of the Austin City Council. The Oaks Memorandum was prepared and delivered within the scope of Brion Oaks authority as an employee of the City of Austin. A copy of the Oaks

Memorandum, including copies of the Peace Mill Evaluations and the Joyce James Report, is attached to this complaint as Exhibit B, and they are incorporated herein by reference.

20. The Peace Mill Evaluation of the APD Training and Recruiting Divisions reported the following findings:

a. "Multiple former cadets expressed concerns that training division staff foster a culture of violence, embracing brutality over wisdom throughout the academy experience. . . . Multiple former cadets allege that *the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation*." (Exhibit B, pages 18–19 of 152, emphasis added);

b. "The term *culture of violence* describes institutionally imposed conditions that 'can be used to justify or legitimize direct or structural violence.' . . . [T]he qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied [for the APD Training Academy]." (Exhibit B, page 18 of 152, footnote 8, emphasis in original); and

c. "According to interview respondents, many of the academy's trainers rely overwhelmingly on 'violent', 'brutal', 'traumatizing' practices designed to 'manufacture soldiers' rather than produce community-driven law enforcement professionals adept at de-escalation." (Exhibit B, page 20 of 152.)

21. Each of the above-quoted findings from the Peace Mill Evaluation was true.

22. On January 18, 2021, a panel of Austin community members delivered a Community Report that provided a comprehensive assessment of training videos used in the training curriculum of the APD Training Academy. A copy of the report is attached to this

complaint as Exhibit C, and it is incorporated herein by reference. The Community Report was prepared with the authorization of the Austin City Council pursuant to Council Resolution No. 20191205-066 dated December 5, 2019 (attached to this Complaint as Exhibit F).

23. The Community Report provides an assessment of videos and training materials that had been in use within the APD Training Academy for many years prior to the shooting of Alex Gonzales, Jr. The Community Report states that "[t]he videos we reviewed were chosen by leadership from the Austin Police Department and the Office of Police Oversight." (Exhibit C, page 3 of 26.)

24. The Community Report stated the following findings:

a. "Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed." (Exhibit C, page 6 of 26);

b. "One of the more pervasive biases we observed is the us-versus-them mindset. This bias existed at a fundamental, pervasive level, further informing other biases with respect to race, ethnicity, gender, and ability, and affected officers of color and female officers in the same or similar ways as White male officers." (Exhibit C, page 14 of 26);

c. "The us-versus-them bias was explicit in some of the videos—i.e. police work is 'the deadly game of cops and robbers'; however, much of it was implicit. This bias was manifested in the following ways:

- An enhanced focus on officer safety over the safety of the community as a whole,
- A 'warrior' versus 'service' mentality in which officers see themselves as

the 'good guys' and the public they interact with as 'bad guys,'

. . .

- Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled."

(Exhibit C, pages 14-15 of 26);

d. "Primarily this bias manifested in a focus on police officers 'winning' by overcoming resistance and threat from the community or by prevailing in court or in grievance and complaint hearings. . . . The focus turns from compassion to conquest as officers see community as a roadblock in their effort to control and 'win.' In the end, communities will continue to suffer, as there is no viable way to 'win' – not only against police officers, but also against the system that continues to protect police officers in this us-versus-them framework." (Exhibit C, page 15 of 26);

e. "We also observed evidence of the growing militarization of policing in the videos. . . . Many police organizations actively propagate the idea that our cities are a kind of 'war zone' rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of 'bad actors' which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy." (Exhibit C, page 15 of 26);

f. "Connected to both increasing militarism and the us-versus-them dichotomy, which we believe is at the heart of the repeated instances of police overreactions to threat

and use of excessive force, is what researchers have called the 'danger imperative'—a belief in a constant and prevalent danger for police officers. . . Several of the descriptions of the training materials in use at the APD academy state this plainly." (Exhibit C, page 16 of 26);

g. "[O]fficers are trained to view every encounter as potentially life-threatening." (Exhibit C, page 17 of 26);

h. "One of the training officers acknowledged that there has been an overemphasis on an officer 'going home at the end of the shift' for some time in policing and police training. The training we viewed, particularly the training highlighting the danger imperative, definitely emphasized the safety of the officer above all else." (Exhibit C, page 17 of 26); and

i. "From what we observed in videos and with conversations with instructors, we contend that the structure of policing as a whole, particularly the focus on control and the warrior mentality, reinforces the us-versus-them dichotomy in ways that tend toward escalation and grievous mistakes in judgment." (Exhibit C, page 18 of 26).

25. Each of the above-quoted findings from the Community Report was true.

26. On February 26, 2021, third-party consultant Kroll Associates, Inc. delivered to the City of Austin (via Director of Austin Office of Police Oversight Farah Muscadin and Deputy City Manager Nuria Rivera-Vandermyde) a Memorandum regarding Kroll's Preliminary Assessment of the Austin Police Training Academy (herein the "Kroll Preliminary Assessment"). The Kroll Preliminary Assessment is attached to this complaint as Exhibit D and is incorporated herein by reference. The Kroll Preliminary Assessment was prepared pursuant to the authorization of the

Austin City Council.

27. Despite the dramatic findings by Dr. Villanueva and the Community Review panel, persons with the APD training academy have been resistant to changing the police training curriculum. The Kroll Preliminary Assessment states:

a. "The majority of APD and Academy leadership have questioned the assertion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a 'warrior' mindset, which leads to an 'us vs. them' mentality of officers on the front lines fighting crime." (Exhibit D, page 5 of 22); and

b. "When asked if the Academy is proactively revisiting the existing curriculum and lesson plans . . . the answer provided is that Academy instructors and supervisors are awaiting further guidance and input from the new ODTM, whenever that person is hired to replace Dr. Villanueva." (Exhibit D, page 8 of 22.)

28. Each of the above-quoted statements from the Kroll Preliminary Assessment was true.

29. On April 23, 2021 third-party consultant Kroll Associates, Inc. delivered to the City of Austin, Office of Police Oversight / City Manager's Office their Final Report on the Austin Police Department: Review and Assessment of Training Academy (herein the "Kroll Final Report"). The Kroll Final Report is attached to this complaint as Exhibit E and is incorporated herein by reference. The Kroll Final Report prepared pursuant to the authorization of the Austin City Council.

30. The Kroll Final Report states:

a. "The Academy at present remains a predominantly paramilitary training model."

(Exhibit E, page 6 of 113);

b. "[I]n the greater context of police work, seeing oneself primarily as a 'warrior' is a precarious mindset. . . . [W]hen officers are taught to see citizens as potential threats to their life, they learn to fear them. Thus, interactions between police and the community often start with suspicion, vigilance and caution, and positive encounters become infrequent, if not impossible. Furthermore, since officers are taught to physically control their space and react forcefully to noncompliance, they sometimes escalate otherwise peaceful encounters, making situations more dangerous for both sides." (Exhibit E, page 16 of 113);

c. "Other components of the military model may also be inconsistent with the demands of modern policing. . . . [T]he use of recruiting videos and web content that routinely feature high-action sequences and appeals to strength and violence over service can send the wrong message about the nature of policing in a progressive urban environment." (Exhibit E, page 16 of 113);

d. "Using a different training approach, police academies can establish a guardian-centric culture that focuses on service to the community rather than fighting crime, while still preparing officers to effectively react and respond to crisis situations. . . . Experts contend that this training style—which emphasizes strengthening officers' critical decision-making skills, communication, and emotional intelligence skills—is better associated with the skills and tactics necessary to handle complex situations that officers are likely to face in the field." (Exhibit E, page 17 of 113); and

e. "APD leadership has expressed its belief to Kroll that some aspects of a

> paramilitary structure are an essential component of police culture . . . . Indeed, the majority of APD and Academy leadership we spoke with questioned the suggestion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a 'warrior' mindset, which leads to an 'us vs. them' mentality of officers on the front lines fighting crime." (Exhibit E, page 49 of 113.)

31. Each of the above-quoted statements from the Kroll Final Report was true.

32. The City of Austin has long known, for many years prior to the death of Alex Gonzales, Jr., that its policies, practices, and customs (including but not limited to the police training described above) caused and encouraged a disproportionate use of excessive force targeted towards Hispanic and Black persons. The encouragement and toleration of the use of excessive force in a racially discriminatory manner was particularly ingrained in the training methods and training materials used at the Austin Police Department Training Academy, both for new cadet training and ongoing officer training.

33. On December 5, 2019 the Austin City Counsel adopted Resolution No. 20191205-066 ("Resolution 66"). A copy of Resolution 66 is attached hereto as Exhibit F and is incorporated herein by reference. The Austin City Counsel duly adopted resolution 66 pursuant to its legal authority. Resolution 66 states in relevant part:

a. "[T]he City of Austin acknowledges that the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy." (Exhibit F, page 1 of 12);

b. "[T]he Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans

and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates." (Exhibit F, page 1 of 12); and

c. "[P]atterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust . . . and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum." (Exhibit F, page 4 of 12.)

34. Each of the above-quoted statements from Resolution 66 was true.

35. Resolution 66 directed the Austin City Manager to "initiate a comprehensive, multi-pronged investigation and evaluation of the extent to which forms of bigotry and discrimination are present in the protocols, practices, and behaviors of the officers of the Austin Police Department." (Exhibit F, page 4 of 12.)

36. Resolution 66 further directed the City Manager to "initiate an audit of the Austin Police Department's training materials, course/section descriptions and duration, and description of any other procedures (e.g. detailed descriptions of scenarios) administered to cadet classes and to active officers related to training on communication strategies, cultural competency, acknowledging and addressing bias, use of force, de-escalation, search, proactive policing, mental health response, protocols for non-English speaking persons, protocols for disabled persons, recognizing resistance and the rules and procedures that define resistance and their evaluation protocols, as well as the course/section content and duration of all other coursework required at the cadet academy and their evaluation protocols." (Exhibit F, page 9–10 of 12).

37. On December 28, 2020, the Peace Mill Evaluation of APD Training and Recruiting Divisions (described above) stated the following findings:

a. "Recent reports from sources including the Office of Police Oversight and APD's own internal investigator offer even further evidence that there are serious gaps in the department's attempts to address racism and inequity in policing." (Exhibit B, page 20 of 152);

b. "The culture of the APD training academy, detailed firsthand by the courageous respondents who were interviewed for this research, conflicts directly with the department's recruiting and public relations campaigns, which proclaim a police department focused on diversity, equity and community engagement. APD's own data reveals repeated failures at achieving these goals." (Exhibit B, page 22 of 152);

c. "Further interviews with APD division leaders from multiple divisions indicate that the department's commitment to the equity assessment process has been similarly superficial." (Exhibit B, page 23 of 152); and

d. "In fact, it is hard to identify any meaningful, measurable commitments to equitable outcomes when assessing the division's responses [to the City's Equity Assessment Tool]. The division's staff is not diverse and there are no specific or measurable standards for ensuring equitable practices in day-to-day operations." (Exhibit B, page 34 of 152.)

38. Each of the above-quoted findings from the Peace Mill Evaluation was true.

39. On December 28, 2020, the Peace Mill Evaluation of APD Internal Affairs and Professional Standards Division (described above) stated the following findings:

a. "APD's Internal Affairs and Professional Standards division has few strategies and

protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's ability to implement principles of diversity, equity and inclusion." (Exhibit B, page 52 of 152);

b. "If the Training Division, which fails tremendously to implement principles of equity, does not graduate diverse classes from its academy, Internal Affairs is, by extension, prohibited from accessing a diverse candidate pool. Perhaps more than any other example, this highlights the need for deep and systemic changes at APD." (Exhibit B, page 52 of 152); and

c. "Evidence from the Internal Affairs and Professional Standards division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes." (Exhibit B, page 53 of 152.)

40. Each of the above-quoted findings from the Peace Mill Evaluation was true.

41. On January 18, 2021, the Community Report (described above) offered the following findings with respect to its assessment of the videos and other training materials being used by the APD Training Academy:

a. "***[B]y far the most alarming pattern we witnessed*** [in the training videos] ***was the harmful stereotypes perpetuated against Black and Brown communities***. The videos shed light on the disproportionate interactions police have with Black, Indigenous, and Brown communities that result in violence and death." (Exhibit C, page 4 of 26, emphasis in original);

b. "Many of the videos showed People of Color, and in particular, Black people, being

brutalized and/or their well-being utterly disregarded." (Exhibit C, page 6 of 26);

c. "There was gross overrepresentation of the use of force and negative outcomes from mostly White male officers interacting with Black and Brown community members. We witnessed again and again Black men dying within minutes, sometimes within seconds, of an interaction with police." (Exhibit C, page 6 of 26, emphasis added);

d. "There were exceptionally few videos showing the police trying to de-escalate situations involving People of Color. In many of the videos showing encounters with community members over minor criminal infractions, a strong emphasis on gaining compliance and control quickly led to rapid escalation with often violent and even deadly results." (Exhibit C, page 6-7 of 26, emphasis added);

e. "Many of the videos . . . are so disturbing in gratuitous violence against Black and Brown people that we strongly recommend that they only be used as examples of why community members historically mistrust the police. . . . We fear that repeated exposure to needless violence normalizes such interactions with the public for the cadets and desensitizes them to their own and their communities' humanity." (Exhibit C, page 7 of 26);

f. "There was a clear pattern, both explicit and implicit, of different communities being offered different degrees of understanding and grace by officers. Police interactions with upper-class, White communities were noticeably absent in the videos. White people were often given considerable grace and understanding even when they demonstrated dangerous behavior, while People of Color, in particular Black men, were given little to no grace or understanding even for minor and less

threatening actions. For example, one video of an armed White man showed an officer speaking calmly and reiterating the person's right to carry a firearm. In contrast, in videos where People of Color were armed or even unarmed, police officers treated them as threats and moved towards use of force with great speed. Such patterns echoed and reinforced popular narratives about, and attitudes toward, communities of color as more 'dangerous' in clear distinction to White people." (Exhibit C, page 8 of 26, emphasis added); and

g. "It was a very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats. In one example, we watched a police officer give a White-presenting man seven minutes of grace and conversation despite his suspicious behavior, while in several other videos a Black man was shot within seconds of being approached by an officer. The pattern we witnessed was that White community members in crisis are allowed to be in crisis; whereas Black community members, whether in crisis or not, are perceived with suspicion as threats." (Exhibit C, page 10 of 26.)

42. Each of the above-quoted findings from the Community Report was true.

43. On April 23, 2021, the Kroll Final Report (described above), provided the following findings from its assessments of APD Training Academy training practices:

a. "[S]ome Academy instructors implicitly taught their students to be biased in enforcing the law. . . .[S]ome of the cadets perceived that the bias was inherently a part of Academy culture and that instructors were indoctrinated into that culture." (Exhibit E, page 42 of 113); and

b. "According to the cadets interviewed, while APD 'talked a good game' about being inclusive, in reality, they perpetuated exclusion." (Exhibit E, page 42 of 113.)

44. Each of the above-quoted findings from the Kroll Final Report was true.

45. In 2016, the Center for Policing Equity conducted an assessment of City of Austin policing data for the years 2014 and 2015 and released a research report entitled "The Science of Policing Equity: Measuring Fairness in the Austin Police Department" (herein the "CPE Report"). A copy of the CPE Report as published in October 2016 and revised in May 2017 is attached as Exhibit G and is incorporated herein by reference.

46. The CPE Report found that Austin police officers used more force in the neighborhoods where Black and Hispanic Austinites live as compared to use of force in predominantly White neighborhoods. Even after adjusting for crime and poverty variables, the CPE Report found that Austin police officers' use of force in Black and Hispanic neighborhoods was disproportionate and unjustified. The CPE Report stated:

a. "The raw data point to a disparity of treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty." (Exhibit G, page 2 of 18);

b. "Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA [metropolitan statistical area]." (Exhibit G, page 11 of 18);

c. "Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin's neighborhoods with a higher percentage of black or

Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood *were statistically significant positive predictors of police use of force*." (Exhibit G, page 12 of 18, emphasis added); and

d. "[A]nalyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained**. In other words, community-level explanations of use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks." (Exhibit G, page 15 of 18, emphasis in original.)

47. Each of the above-quoted statements from the CPE Report was true.

48. On December 5, 2019 Austin City Council Resolution 66 (described above) recognized racial biases in APD policing practices and policing outcomes:

a. "[T]he City of Austin acknowledges the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy." (Exhibit F, page 1 of 12); and

b. "[T]he Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to cause severe force in communities where African-American and Latinos live, even after

controlling for factors such as community crime and poverty rates." (Exhibit F, page 1 of 12.)

49. Each of the above-quoted statements from Resolution 66 was true.

50. In November 2020, the Joyce James Report further documented the racial bias and disparities in the APDs use of lethal force and excessive force:

a. "Findings showed that residents in Austin neighborhoods with a higher percentage of African American or Hispanic/Latinx residents, those in poverty, and neighborhoods with higher crime rates, had disproportionate force and severity of force used upon them. When these possibilities other than race were adjusted statistically, African American and Hispanic/Latinx residents still experienced higher rates of use of force." (Exhibit B, page 125 of 152); and

b. "The Austin Police Departments Research and Planning Unit (2017) also produced data on use of force (along with other measures). In this case as well, when the use of force from 2014 to 2016 by race and ethnicity was compared to the population, African Americans and Hispanics/Latinxs had disproportionate force used upon them relative to Whites." (Exhibit B, page 125 of 152.)

51. Each of the above-quoted statements from the Joyce James Report was true.

52. On information and belief, the City of Austin and the APD maintain other policies, practices, and customs that reinforce, encourage, and tolerate the paramilitary training of its police officers, the "warrior mindset," and the "us-versus-them" approach to policing. These policies and practices include, without limitation, investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and complaints involving officer use of force. On information and belief, these additional policies,

practices, and customs reinforce and exacerbate the pervasive APD culture that permits, encourages, and tolerates the use of excessive force by Austin police officers.

53. On information and belief, the City of Austin and the APD maintain other policies, practices and customs that reinforce, encourage, and tolerate the disproportionate use of excessive force against Hispanic and Black citizens and in predominantly Hispanic and Black neighborhoods. These policies and practices include, without limitation, investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and complaints involving officer use of force. On information and belief, these additional policies, practices, and customs reinforce and exacerbate the pervasive APD culture that encourages and tolerates racially disproportionate use of excessive force by Austin police officers.

54. The City of Austin's policies, practices and customs that cause, tolerate, and encourage the use of excessive force by APD officers (both generally and also disproportionately directed at Black and Hispanic persons in Black and Hispanic communities) is demonstrated by APD's long and well-documented pattern and practice of such excessive force that includes at least the following specific examples: (1) the shooting and killing of Daniel Rocha by APD Officer Julie Schroeder on or about June 9, 2005; (2) the shooting and killing of Kevin Brown by APD Sgt. Michael Olsen on or about June 3, 2007; (3) the shooting of Sir Smith by APD Officer Leonardo Quintana on or about May 11, 2009; (4) the use of a TASER and use of force against Carlos Chacon by APD Officers Eric Copeland and Russell Rose on or about April 29, 2011; (5) the shooting and killing of Byron Carter by APD Officer Nathan Wagner on or about May 30, 2011; (6) the shooting and killing of Ahmede Bradley by APD Officer Eric Copeland on or about April 5, 2012; (7) the use of force against Pete Hernandez by APD Officer Jesus Sanchez on or about

June 7, 2012; (8) the shooting and killing of Larry Jackson, Jr. by APD Det. Charles Kleinert on or about July 29, 2013; (9) the shooting of Jawhari Smith by APD Sgt. Greg White in March 2014; (10) the shooting of David Joseph by APD Officer Geoffrey Freeman on or about February 8, 2016; (11) APD Officer James Harvel shooting at Jason Roque on or about May 2, 2017; (12) the shooting of Landon Nobles by APD Officers Richard Egal and Maxwell Johnson on or about May 7, 2017; (13) the use of a TASER and force against Javier Ambler, resulting in his death, by APD Officer Michael Nissen on or about March 28, 2019; and (14) the shooting and killing of Michael Ramos by APD Officer Christopher Taylor on or about April 24, 2020. APD's pattern and practice of excessive force is further confirmed by APD's response to citizen protests during the 2020 Black Lives Matter Demonstrations when APD unleashed a wave of excessive force against peaceful citizens who were merely exercising their First Amendment rights, and many of whom were shot by APD with so-called "less lethal" munitions, resulting in traumatic and serious brain, head, and other serious physical injuries.

55. APD's own internal reports confirm APD's pattern and practice of excessive force. APD's own reports reflect that, from 2006 to 2016, APD used force against 1,159 people who only exhibited "passive" resistance, 838 people who only exhibited "verbal" resistance, and 6,626 people who only exhibited "defensive" resistance. In 2017, APD changed its reporting metrics such that the type of resistance is not available for incidents during that year. From 2018 through 2020, for identified individuals, APD's own reports reflect that APD used force against at least 58 people who had not resisted, against 310 people who only exhibited "passive" resistance, and against 4,148 people who only exhibited "defensive" resistance.

56. APD's own internal reports show that, from 2017 to 2020, APD began using force 58% more often—while making 51% *fewer* arrests. During an independent review authorized by

the City of Austin, 112 uses of force (against 88 individuals) in late 2019 were found to have been inappropriate, despite approval of force by APD supervisors in each incident. The same independent review found that the APD use of force process lacked proper internal supervisory review and investigation and frequently fails to address the appropriateness of the use of force used against members of the public.

B. The City of Austin Adopted a Formal Policy Permitting Off-Duty APD Officers to Take Law Enforcement Actions, Without Adequate Policies, Training, and Oversight to Prevent Off-Duty Officers From Using Excessive Force.

57. For many years prior to the death of Alex Gonzales, Jr. on January 5, 2021, the City of Austin and APD have permitted and encouraged APD officers to take off-duty law enforcement actions against civilians, including arrest, use of force, and even the use of lethal force. APD trained *and encouraged* APD officers to be ready and willing to take off-duty law enforcement actions in a variety of circumstances. APD permitted, trained, *and encouraged* its officers to carry their department-issued duty firearms and/or personal firearms while off-duty in case the officer decided to use the weapon in connection with an off-duty law enforcement action.

58. For many years prior to the death of Alex Gonzales, Jr. on January 5, 2021, the City of Austin and APD adopted formal written policies regarding an APD police officer's off-duty law enforcement action. On information and belief, the applicable written policy in effect on January 5, 2021 was Section 364 (entitled "Off-Duty Law Enforcement Actions") of the APD General Orders issued on November 12, 2020, a copy of which is attached hereto as Exhibit H. This written policy of APD provided for each of the following:

a. Section 364.3(a) of this written policy expressly authorizes APD officers to carry a firearm in a law enforcement capacity while off-duty, as follows: "Any officer wishing to carry a firearm while off-duty is authorized to do so as either a law

enforcement officer as allowed by this order or as a civilian under the authority of the state issued license, not both."

b. Section 364.3(b) of this written policy *requires* the off-duty officer to carry his or her police badge and identification card when the off-duty officer carries a firearm in a law enforcement capacity. It states: "Officers shall carry their Department issued badge and identification card when carrying firearms off-duty under the authority granted to a law enforcement officer."

c. Section 364.2 *expressly encourages* an off-duty officer to take law enforcement actions if the off-duty officer "reasonably believes" that a civilian poses an imminent threat of death, serious injury, or significant property damage. It states: "Officers who becomes [sic] aware of an incident or circumstance that he reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage, should take reasonable action to minimize the threat."

d. Section 364.4.1 of this written policy expressly *permits* an off-duty officer to take law enforcement actions against a civilian (including the use of *lethal force*) in some situations where the off-duty officer has not first displayed a police badge or otherwise identified himself or herself as a police officer. It states: "Officers should clearly identify himself as a police officer to those involved in the situation, *if practicable*." (Emphasis added). By instructing the officer to identify himself only "if practicable" without any guidance on when it is or is not "practicable" to identify as a police officer, the written policy leaves to the unguided discretion to the off-duty officer when the officer may undertake a law enforcement action (including the use of lethal force) without first displaying a police badge or otherwise

identifying as a police officer.

59. In connection with this written policy that permitted and encouraged off-duty police officers to take off-duty law enforcement actions, the City of Austin and APD trained its officers in ways that conflated the contexts of on-duty and off-duty police actions. In particular:

a. Section 364.1 of APD's written policy instructs off-duty officers that "[t]he same standard of objective reasonableness that applies to on-duty enforcement actions shall also apply to off-duty enforcement actions." APD trained its officers on this aspect of its written policy in ways that caused and encouraged its officers to disregard critical distinctions between on-duty and off-duty police conduct, including but not limited to the use of lethal force.

b. APD trained its officers that the "force continuum" or "force ladder" should be equally applied to a situation where an off-duty officer has not displayed a badge or identified as a police officer. This disregards critical distinctions between the on-duty and off-duty law enforcement contexts because the lowest level of the force ladder—at which the mere presence of a uniformed police officer is deemed a show of force that permits a civilian an opportunity to comply—is not present when the police officer is off-duty and out-of-uniform.

c. APD trained its officers to expect a civilian to comply with an off-duty officer's verbal commands even before the off-duty officer has displayed a police badge and/or has otherwise adequately identified himself or herself as a police officer. APD thereby trained its officers to disregard critical distinction between the on-duty and off-duty enforcement contexts, including that non-compliance with an off-duty officer's verbal commands in such circumstances cannot be considered a

"failure to comply" that justifies the off-duty officers' use of additional force measures according to the "force ladder."

d. APD trained its officers to utilize "Action Beats Reaction" principles and tactical training that are not equally applicable in off-duty scenarios, including where the off-duty officer has not displayed a badge or identified as a police officer. APD trained its officers to assess the mere sight of a firearm in close proximity to a civilian as an existential threat to officer safety justifying the off-duty officer's use of lethal force on the civilian in contexts that are not equally applicable in off-duty scenarios, especially before the off-duty officer has shown a badge or identified as a police officer. APD trained its officers in ways that disregard respect for the Second Amendment constitutional rights of civilians who carry firearms, and in particular the rights and reasonable expectations of citizens and civilians who themselves carry firearms, in the absence of an announced and verifiable police presence by the off-duty officer.

e. APD trained its officers to internalize the so-called first rule of policing—that the officer makes sure he or she goes home at the end of a shift—is equally applicable with respect to permissible law enforcement action when the APD officer is off-duty. APD trained its officers that they are entitled to use lethal force in response to "unknown" potential risks of a threat, and they are entitled to preemptively use lethal force in response to small cues—such as a bulge in a person's waistband—that are inappropriate in the context of off-duty law enforcement action, particularly when the off-duty officer has not displayed a badge or identified as a police officer.

60. The City of Austin and APD provided the training and/or lack of training described

above despite knowing that its normal training of on-duty conduct was intended by design to become deeply instilled at an instinctive level for every APD officer. APD's normal "warrior mentality" training, along with APD's policies and training that permitted and encouraged off-duty policing actions, had the effect of overwhelming and drowning out any other aspects of training or policy that might have appropriately distinguished on-duty and off-duty policing scenarios in the minds and according to the instincts of APD's officers. APD's normal "warrior mentality" training, in connection with at least the policies and training outlined above, were intended to cause and did cause off-duty officers to interpret any ambiguities in and exercise any discretion granted by APD's formal policies to permit and require escalated force, including lethal force, by off-duty officers.

C. Officer Gutierrez Used Excessive Force When He Shot and Mortally Wounded Alex Gonzales, Jr. Without Provocation or Justification.

61. In the early morning hours of January 5, 2021, minutes past midnight, Alex Gonzales, Jr. ("Alex") was driving his family home for the night. In the vehicle with Alex was his long-time girlfriend and partner Jessica Arellano ("Jessica"), who sat in the front passenger seat. In the back seat of Alex's car was Alex and Jessica's two-month-old infant, Z.A.G., who was safely secured and sleeping in a child restraining seat located in the back seat of the car, on the right-hand side just inches behind his mother Jessica in the front passenger seat. Alex and Jessica were on their way home to tuck in baby Z.A.G. to sleep for the night.

62. As Alex and his family drove on or near Oltorf Avenue in Austin, Texas, Alex first encountered Gabriel Gutierrez ("Gutierrez") as Gutierrez was driving in the same direction as Alex's car.

63. Gutierrez was (and remains) a licensed peace officer in the State of Texas and a patrol officer for the Austin Police Department. At the time Gutierrez first encountered Alex's car

on the roadway that night, Gutierrez was off duty. Gutierrez was dressed in civilian workout clothes following a late-night workout at his personal gym. Gutierrez was driving his personal, unmarked car.

64. On information and belief, Gutierrez was returning home to his apartment following a workout at his gym when he first encountered Alex's car on the road. On information and belief, Gutierrez was driving in a reckless and dangerous manner when he first encountered Alex's car. On information and belief, Gutierrez was responsible for creating and causing what Gutierrez would later describe to the 911 operator as a "road rage" encounter with Alex. On information and belief, Gutierrez drove his vehicle to make a sudden and unexpected turn in front of Alex's car ("cutting off" Alex's car) as Gutierrez sped home from the gym. On information and belief, Gutierrez's aggressive and reckless driving as he encountered Alex's vehicle presented a real and substantial risk of causing a collision between the vehicles. On information and belief, Gutierrez's driving in his encounter with Alex's car posed a real and substantial danger to the physical safety of each passenger in Alex's car (including baby Z.A.G.), including risks of severe physical injury or even death to the passengers of Alex's car.

65. After Gutierrez cut off Alex's car, Gutierrez subsequently turned from E. Oltorf Street and headed southwest on Wickersham Lane. Alex followed behind Gutierrez, also turning from E. Oltorf Street onto Wickersham Lane.

66. Gutierrez's apartment was located on Wickersham Lane, with the apartment complex entrance located on the left side of the road to both Gutierrez and Alex as they each drove southwest on Wickersham. Gutierrez slowed his car as he approached the turn-in for his apartment complex on the left. But rather than attempting to turn left into his apartment complex, Gutierrez slowly pulled his car to the right-side curb and stopped his vehicle.

67. Gutierrez's driving actions were intended to invite or encourage Alex to pull up his car alongside Gutierrez's car. Gutierrez's driving actions signaled to Alex that Gutierrez was inviting a "road rage" confrontation between the drivers. Because of Gutierrez's own aggressive driving and provocation toward Alex's car, Gutierrez knew at that moment that Alex was likely to be angry when he pulled up next to Gutierrez, and would be likely to use aggressive words or actions in such a "road rage" confrontation. On information and belief, Gutierrez already had his firearm drawn and he was already contemplating scenarios in which he might use lethal force against the approaching driver even before Alex pulled his car up next to Gutierrez.

68. As Gutierrez pulled to the right and stopped, Alex pulled his vehicle forward until it was alongside the left of Gutierrez's vehicle, where Alex stopped his vehicle.

69. Alex did not use his vehicle to "cut off" Gutierrez from making a left hand turn into the apartment complex. Gutierrez did not attempt to turn into the apartment complex at that time. Gutierrez slowed and pulled to the right, allowing Alex to pull up next to him on Gutierrez's left. At no time did Alex's driving present a risk of causing a collision with Gutierrez. At no time was Gutierrez required to alter his own driving in order to avert a collision with Alex's vehicle.

70. Jessica sat upright and was fully visible in the front passenger seat of Alex's car. When Alex stopped his car next to Gutierrez, Jessica was positioned in between the two men, Alex and Gutierrez. Jessica was sitting, clearly visible, no more than a few feet or less from Gutierrez as he sat in the driver's seat of his own car. Baby Z.A.G. was in the back, mere feet or inches behind Jessica.

71. Alex pulled up next to Gutierrez's car with the intention of confronting Gutierrez about his aggressive driving. Alex intended to inform Gutierrez that there was a baby in the back seat of the car. Alex intended to have an important "man-to-man" with this unknown civilian, this

crazy aggressive road rage driver who almost crashed into a family with a baby in the back seat.

72. Gutierrez did not show his police badge or in any other way identify himself as a police officer before he made his decision to use lethal force. Gutierrez was wearing civilian clothes and driving an unmarked car at that moment. Alex and Jessica did not know (and had no reason to know) that Gutierrez was an APD patrol officer. Gutierrez did not issue any verbal commands for compliance directed at either Alex or Jessica before his decision to use lethal force. Gutierrez did not announce or attempt any arrest or detention before his decision to use lethal force.

73. Less than three seconds after Alex pulled his car up next to Gutierrez's car, a barrage of gunfire erupted from Gutierrez's car, directing lethal force at Alex and Jessica through the car windows. Gutierrez fires his weapon at least six times. At least one bullet fired by Gutierrez hit Alex in the head, and at least three bullets fired by Gutierrez hit Jessica in the arm, back and chest. Immediately, both Alex and Jessica were severely wounded and began bleeding profusely.

74. Even though Gutierrez was off-duty at the time, Gutierrez's use of lethal force directed at Alex was undertaken as a law enforcement action by Gutierrez on Alex.

75. No gunfire or lethal force was ever directed at Gutierrez. Alex never fired a weapon at Gutierrez or anyone else. Jessica never fired a weapon at Gutierrez or anyone else. Even after Gutierrez began firing multiple bullets at Alex and Jessica, there was no return gunfire directed at Gutierrez.

76. Alex did not pull up to Gutierrez's car with a gun pointed at Gutierrez. Gutierrez's statements to the contrary are false.

77. On information and belief, Alex did not point a gun directly at Gutierrez at any time. On information and belief, Alex did not brandish a gun in a threatening manner toward

Gutierrez at any time. On information and belief, Alex did nothing whatsoever toward Gutierrez that would have caused Gutierrez to form a reasonable belief that Alex posed any risk of inflicting immediate physical harm to Gutierrez or anyone else. On information and belief, after Gutierrez started firing his weapon Alex attempted to retrieve a handgun from underneath his seat, but Alex was unable to retrieve his firearm in time to defend himself because Gutierrez opened fire so quickly, and because Gutierrez so quickly and immediately shot Alex in the head.

78. On information and belief, Alex's attempts to retrieve his firearm to defend himself after Gutierrez started shooting were legally valid acts of self-defense and/or defense of others.

79. Gutierrez was off-duty at the time he shot Alex and Jessica. Gutierrez did not witness or observe anything, or have any other information, that would justify his decision to take law enforcement actions with respect to Alex or Jessica while Gutierrez was off-duty. Gutierrez did not witness a completed crime or a crime in progress. Gutierrez had no reason to believe that Alex or Jessica posed any immediate risk of physical danger or harm to Gutierrez or anyone else. No reasonable off-duty officer at the time, given the totality of facts and circumstances, would have made the decision that Gutierrez made to take law enforcement actions against Alex and Jessica by directing lethal force at them.

80. Gutierrez decided to use lethal force in disregard of the safety of bystanders Jessica and baby Z.A.G. In particular, Jessica sat upright and clearly visible in the front passenger seat. Gutierrez, a patrol officer highly trained in situational awareness and tactical use of firearms in lethal force situations, shot her three times at close range. No reasonable officer under the circumstances would have made the same decision as Gutierrez to use lethal force, given the substantial risk of severe physical injury or death to Jessica, who was directly in Gutierrez's line of fire at close range.

81. On information and belief, at the time of the shooting Gutierrez was in a physical and/or mental condition where he lacked the ability to accurately perceive and/or mentally process the events as they actually occurred that evening. On information and belief, Gutierrez caused himself to be in such a physical and/or mental condition by ingesting or consuming substances or compounds that altered his natural physical and/or mental conditions and abilities.

82. Gutierrez had reasonable alternatives available to him other than the use of lethal force. For example, Gutierrez could have simply pulled his car forward and immediately ended the face-to-face confrontation. Gutierrez also could have pursued other methods of deescalating the situation, such as identifying himself as a police officer and issuing verbal commands to Alex and Jessica. But Gutierrez instead chose to immediately use lethal force, with no efforts to deescalate or use alternatives to lethal force. Gutierrez's failure to pursue de-escalation or alternatives to lethal force was unreasonable. No reasonable officer under the circumstances would have chosen to use lethal force directed at Alex and Jessica given the available alternatives to the use of lethal force.

D. Gutierrez Calls 911 and Makes Materially False Statements to the 911 Operator.

83. In an instant that night, Alex had gone from driving along a city street with his girlfriend and baby to having the macabre experience of a stranger shooting repeatedly into his car with a semi-automatic handgun. As the events unfolded, Alex knew only that he had been shot in the head and that Jessica had been shot multiple times. At the moment Gutierrez ended his barrage of gunfire, Alex did not know whether his infant son Z.A.G. in the back seat had been shot, injured, or perhaps even killed.

84. Almost immediately after Gutierrez stopped shooting, Alex's vehicle rolled slowly forward and up onto the right-hand curb, until it stopped a short distance ahead of Gutierrez's

vehicle. Alex's car stopped when it ran into the curb. Jessica opened the passenger-side door and almost immediately fell to the ground, continuing to bleed profusely from the gunshot wounds inflicted by Gutierrez.

85. Gutierrez's car followed Alex's car a short distance and then stopped several feet behind Alex's car. Gutierrez then exited his own vehicle with his gun drawn and pointed in the direction of Alex's car, with Alex and baby Z.A.G. still inside the car and Jessica laying injured and bleeding on the ground beside Alex's car. Gutierrez would keep his gun pointed at Alex and in the direction of Alex's car for at least the next several minutes.

86. At approximately 12:33 AM, after having fired at least six shots into Alex's vehicle and hitting both Alex and Jessica, Gutierrez called 911.

87. Gutierrez began his call to 911 by identifying himself to the 911 operator as an off-duty APD officer. Gutierrez then stated "I have shots fired. 2400 Wickersham Lane."

88. When the 911 operator next asked Gutierrez how many shots he had heard, Gutierrez responded by informing the 911 operator that a "victim" had been shot. Gutierrez stated: "I have a— a victim—the driver—the, uh, other vehicle, he has a gun. I'm not—I'm not shot. I need EMS over here."

89. Seconds later, Gutierrez can be heard shouting at Alex "Hey, drop your gun. Austin Police." Gutierrez then states to the 911 operator: "He's got a gun in his hand." Gutierrez's statement was false when it was made. At the time Gutierrez made this statement to the 911 operator, Alex did not have a gun in his hand.

90. Seconds later, Gutierrez again states to the 911 operator: "I'm APD, I—he's got a gun in his hand." Again, Gutierrez's statement was false when it was made. At the time Gutierrez made this statement to the 911 operator, Alex did not have a gun in his hand.

91. Seconds later, Gutierrez can be heard yelling at Alex: "Put your gun down, man. Let me see your hands. Hands up, man." Again, this statement was false because at the time Alex did not have a gun in his hand.

92. Gutierrez next stated to the 911 operator: "He's hanging out the door. He *had* a gun in his hand." (Emphasis added) Gutierrez next stated to 911 dispatch: "There's a passenger. She's lying on the ground—female passenger."

93. The 911 operator then asked: "Okay, so tell me exactly what happened." Gutierrez responded by stating: "Um, it was a road rage incident. I was driving and he cut me off, and he pointed a gun at me." Gutierrez's account of the events to the 911 operator was false. Alex had not used his vehicle to "cut off" Gutierrez; and Alex had not pointed a gun at Gutierrez.

94. The 911 operator next asked if anyone was injured, and Gutierrez responded by saying "Yes, the—the driver of the other vehicle. He's shot." Later in the call, Gutierrez would tell the 911 operator that he was unsure whether the female on the ground (Jessica) had been shot or injured. During the entirety of the 911 call, Gutierrez failed to inform the 911 operator that the female on the ground had been shot, even though he personally had shot Jessica three times at close range just moments before.

95. Gutierrez can next be heard yelling at Alex: "Put your gun down. Austin police, put your gun down. Don't make me shoot you again, man." Again, this statement was false because Alex did not have a gun in his hand at the time. Moments later, Gutierrez told the 911 operator: "The driver, he's standing. He's got blood all over his face. He's standing. *I don't know if he's still got the gun in his hand or not*." (Emphasis added).

96. Near the very end of the 911 call, Gutierrez can be heard yelling at Alex: "All right, put your gun down, man. It's the police." Again, this statement was false when made because Alex

did not have a gun in his hand at the time.

97. During the 911 call, Gutierrez informed the 911 operator that the female on the ground was saying "My baby! My baby! My baby!" When the 911 operator asked "Is there a baby involved or is she pregnant? Do we not know?" Gutierrez responded by saying: "I have no idea, I don't know—I have no idea. She's just saying, 'My baby.'"

98. During the 911 call, Alex was severely wounded and bleeding profusely because he had been shot in the head at close range by Gutierrez. The gunshot wound to Alex's head severely compromised Alex's physical and mental functions, and his comprehension. Alex's physical movements were slow and lumbering. After being shot in the head, Alex was physically incapable of making quick, sudden, or unexpected physical movements. Because of Alex's bleeding and lumbering movements, his severe physical injuries and need for immediate medical attention were clearly apparent to any reasonable person and to any reasonable trained law enforcement officer.

99. During the time Gutierrez was on the phone with the 911 operator, Alex opened his car door and slowly exited the vehicle. Because of his severe injuries and physical limitations from being shot, Alex struggled to open his car door, but eventually he managed to open his car door and slowly exit his vehicle. Alex then stood nearly motionless beside his driver-side car door for several minutes. Alex remained in this spot next to the driver-side car door, without making any sudden or unexpected movements, and struggling to remain standing, for the duration of Gutierrez's 911 call and until on-duty police officers arrived at the scene. During this time before on-duty officers arrived, as Alex stood outside his car, Alex never held a gun in his hand.

100. Gutierrez finally, for the first time, identified himself as a police officer by yelling at Alex and Jessica while Gutierrez was on the call with the 911 operator. Gutierrez also began

issuing verbal commands for compliance directed at both Alex and Jessica. On information and belief, Alex's hearing and audio perception were severely impaired at the time because Gutierrez had shot him in the head. On information and belief, Alex was unable to hear or understand Gutierrez's verbal identification as a police officer and Gutierrez's verbal commands because Alex's hearing and audio perception were impaired from having been shot in the head.

101. During the entirety of Gutierrez's 911 call and before on-duty police officers arrived at the scene, Gutierrez made no attempt to render medical aid or provide any emergency physical care to either Alex or Jessica. Gutierrez declined to render aid even though he knew that he had just shot both Alex and Jessica at close range, causing them each to have severe and life-threatening physical injuries.

102. As Gutierrez spoke to the 911 operator, on multiple occasions he turned his back to Alex and Jessica because he did not perceive either of them as presenting a threat to his physical safety. During the entirety of Gutierrez's 911 call and before on-duty police officers arrived at the scene, however, Gutierrez made no attempt to arrest or detain Alex or Jessica. Gutierrez likewise declined to inform any other person that Alex and Jessica no longer (or never did) present a threat to the physical safety of himself, any other person present, or any officer likely to arrive at the scene.

E. Officer Serrato Used Excessive Force When He Shot and Killed Alex Gonzales, Jr. Without Provocation or Justification.

103. At approximately 12:37 a.m., on-duty APD Officer Luis Serrato ("Serrato") and his partner APD Officer Brian Nenno ("Nenno") responded to Gutierrez's 911 call and arrived at the scene.

104. Prior to their arrival at the scene, both Serrato and Nenno had been apprised by 911 dispatch that a person claiming to be an off-duty APD officer had shot the driver of another vehicle.

However, upon arriving at the scene neither Serrato nor Nenno took any steps to verify that Gutierrez was in fact an APD police officer. On information and belief, neither Serrato nor Nenno recognized Gutierrez as an APD officer from past interactions with him.

105. Prior to their arrival at the scene, both Serrato and Nenno had reason to know of the possible presence of a baby at the scene. The 911 dispatch call notes from the event were available to both Serrato and Nenno before they arrived at the scene, and those call notes contained an entry prior to their arrival at the scene that stated: "fem is saying my baby my baby…unkn preg or child". However, neither Serrato nor Nenno took steps to determine if a baby was present at the scene after they arrived.

106. When Serrato and Nenno arrived at the scene, Alex remained standing outside his driver-side door and Jessica remained laying on the ground just outside the passenger door of Alex's vehicle. Serrato and Nenno immediately lined up in formation with Gutierrez, positioned behind Gutierrez's unmarked personal vehicle for cover.

107. Serrato and Nenno immediately joined Gutierrez in aiming their firearms at Alex as he struggled to maintain his balance outside the driver-door of his own vehicle. Serrato and Nenno each pointed his firearm at Alex even though they had not seen Alex holding a gun, had not been told that Alex was in possession of a gun, had no reason to think that Alex had fired a weapon, and had no reason to think that Alex posed a threat of harm to anyone at that time.

108. Only *after* Serrato and Nenno had each pointed their respective gun at Alex did Gutierrez then state to Serrato and Nenno that Alex had pointed a gun at him (Gutierrez). Again, Gutierrez's statement was false when it was made because Alex had not pointed a gun at Gutierrez. Gutierrez also stated to Serrato and Nenno at that time that there was a gun in the driver's side of Alex's car.

109. Almost immediately after arriving at the scene, Serrato and Nenno each knew that Gutierrez had shot both Alex and Jessica. Serrato and Nenno each could easily observe that both Alex and Jessica had suffered severe and life-threatening gunshot wounds. Yest, neither Serrato nor Nenno attempted to render medical aid or assistance to Alex or Jessica upon arriving at the scene.

110. Officer Nenno indicated to Gutierrez that Gutierrez should stand back from the officer's defensive position behind Gutierrez's car, and Gutierrez did so. Nenno and Serrato maintained their defensive position behind Gutierrez's car and continued to point their guns at Alex, who was still standing at the driver's door of his own car. Alex had his hands in plain sight and the officers could plainly see that Alex was not holding a weapon.

111. Nenno and Serrato began shouting multiple, conflicting commands at Alex such as walk, turn around, stop, and keep walking in both English and Spanish.

112. On information and belief, Alex continued to suffer from impaired hearing and impaired auditory processing that prevented him from hearing and understanding the commands that Serrato and Nenno shouted at him. An experienced and trained law enforcement officer in the position of Serrato and Nenno at that time knew or reasonably should have known that there was a high probability that Alex could not hear or understand their verbal commands at the time because he had been shot in the head and was severely injured and bleeding.

113. Alex began to walk slowly and stumble toward the rear of his car and then around to the passenger side of the car. At all times, Alex's movements remained slow and lumbering. He never made any sudden or unexpected movements. Alex's hands remained visible at all times. Serrato and Nenno could both see that Alex had no weapon in his hands.

114. When Alex reached the passenger side of his car, he glanced down to see his

girlfriend Jessica laying on the ground bleeding.

115. While Alex was struggling and staggering to reach the passenger side of the car to check on the welfare of Jessica and Z.A.G., Serrato unnecessarily and without reason abandoned his position of cover behind Gutierrez's vehicle and walked several steps to his right—into the open and away from any cover. Serrato stood completely upright, presenting his full body as a target for potential gunfire.

116. No reasonable officer in Serrato's position would have left cover to expose himself in the open if he believed Alex or his wounded passenger (Jessica) posed an imminent threat of harm to him in those circumstances. During this sequence of events, Nenno maintained his position of cover behind Gutierrez's vehicle at all times.

117. Serrato moved into the open to have a clear line of fire at Alex, as Alex stood next to the rear car door just inches from baby Z.A.G. Serrato kept his gun trained on Alex at all times. On information and belief, Serrato had already decided at the time he abandoned his position of cover that he would use lethal force on Alex if Alex made any small movement with his hand toward the inside of the car.

118. Serrato continued to observe that Alex's hands were empty, and that Alex did not possess or have access to a weapon.

119. Serrato yelled at Alex several times "Don't reach! Don't reach!" On information and belief, Serrato had already determined that he was going to use lethal force on Alex if Alex made any slight reaching move into the car.

120. Not knowing whether his baby Z.A.G. had been shot, Alex slowly opened the rear passenger door to check on his infant son. As Alex bent down to look into the rear passenger door to check on baby Z.A.G., Alex kept his right hand visible and touching the open car door. Alex

gently leaned below the roof line of the vehicle to look inside the car. Alex slowly made a small movement with his left hand toward the interior of the car where Z.A.G. was still secured in a child restraining seat. Alex continued to move slowly, and he made no sudden movements at all.

121. As soon as Alex made even the slightest movement of his left hand into the vehicle, Serrato began rapidly firing his weapon at Alex. In that moment, Alex did not even begin to make any movement to withdraw his hand from the vehicle. Alex did nothing to indicate to Serrato that he presented a threat of harm to anyone in that moment. Serrato did not see Alex in possession of a weapon, and Serrato had no reason to believe that Alex might be able to access a gun or weapon in the right rear seat of Alex's car.

122. Serrato fired at least ten shots at Alex, hitting him multiple times.

123. Serrato's barrage of gunfire further inflicted immediate and serious physical injuries on Alex. Alex slumped to the ground lifeless and dying, just inches away from his infant son Z.A.G. Alex would later die on-scene as a result of his multiple gunshot wounds.

124. Serrato used lethal force on Alex without provocation or justification. At no time did Serrato observe Alex do anything to give Serrato a reasonable belief that Alex posed a risk of immediate physical danger to Serrato or anyone else. Serrato had no other reason or information to believe that Alex posed an immediate risk of physical danger to Serrato or anyone. Serrato knew that Alex himself had already been shot in the head. Serrato observed Alex making slow and lumbering movements at all times, and never making a surprise movement. No reasonable officer would have chosen to use lethal force on Alex given the lack of an immediate threat to anyone's safety.

125. No reasonable officer in Serrato's position that night would have increased his own risk of danger and/or escalated the situation by abandoning a position of cover in the way that

Serrato did. Serrato himself was responsible for creating any risk of danger or perceived risk of danger that Serrato claims to have faced in the moment he chose to use lethal force.

126. Serrato showed no concern for the safety of bystanders when he decided to use lethal force. Serrato knew that Jessica, laying on the ground and severely bleeding from gunshot wounds, was in his line of fire and was at risk of Serrato shooting her if Serrato decided to fire at Alex. Serrato also knew or should have known that a baby may be present at the scene and was at risk of being shot if Serrato chose to use lethal force. No reasonable officer in Serrato's position at the time would have chosen to use lethal force directed at Alex, given the substantial risk of serious physical injury to bystanders.

127. Serrato had reasonable alternatives available to him other than the use of lethal force. For example, Serrato could have maintained his position of cover and waited for additional law enforcement officers to arrive on scene. Serrato could have continued to observe Alex's actions and could have waited to see if Alex ever did anything to indicate that Alex presented a risk of physical injury to anyone. If Serrato had simply kept his cool and waited, he would have seen Alex check on Z.A.G. and would have realized that there was a baby in the car. Serrato could have pursued other methods of de-escalation. No reasonable officer under the circumstances would have chosen to use lethal force on Alex as Serrato did in that moment, given the available alternatives to the use of lethal force.

F. The City of Austin Ratified the Actions and Conduct of Officer Gutierrez and Officer Serrato By Purposefully Conducting an Inadequate Investigation Into the Shooting Death of Alex Gonzales, Jr. and By Failing to Terminate or Discipline Either Officer.

128. The City of Austin and APD began conducting an investigation of the death of Alex Gonzales, Jr. and the shooting of Jessica Arellano almost immediately after the events. As an integral part of its investigation, APD investigated the actions and behavior of both Officer

Gutierrez and Officer Serrato in connection with these events. APD's investigation of Gutierrez and Serrato was handles by APD's Special Investigation Unit ("SIU") and APD's Internal Affairs ("IA") division.

129. From the outset, APD's investigation of Gutierrez's and Serrato's actions did not proceed according to normal police procedures that would be used to investigate similar actions or conduct undertaken by a civilian. APD's investigation, from the beginning, focused on efforts to identify potential justifications and excuses for each officer's actions. APD's investigation was not undertaken with objectivity, and APD's investigation was not primarily motivated by efforts to determine the true facts of the encounter. Instead, APD's investigation used techniques and methods that were aimed at clearing the officers of wrongdoing by identifying potential excuses or justification for their conduct.

130. APD's investigation of Gutierrez and Serrato failed to take normal investigative steps that an objective investigation would have taken. APD's investigation purposefully failed to pursue facts and purposefully failed to gather information that might have led to a conclusion that either Officer Gutierrez or Officer Serrato had violated a policy or made a mistake.

131. In December 2022, potential criminal charges for Officer Gutierrez and / or Officer Serrato related to the killing of Alex Gonzales, Jr. and the shooting of Jessica Arellano were presented to a Travis County Grand Jury. On or about December 27, 2022, the grand jury returned a no-bill with no indictment of criminal charges against either officer. On information and belief, members of APD's SIU investigative team assisted the Travis County District Attorney with presentation of the case against Officers Gutierrez and Serrato to the Travis County grand jury. On information and belief, neither the Travis County district attorney who presented the case to the grand jury nor the APD SIU investigator who assisted did so with the intention of securing an

indictment of either officer. On information and belief, both the Travis County district attorney who presented the case and also the SIU investigators who assisted presented the case to the grand jury with the hope and expectation of *not* securing an indictment so they could wash their hands of the incident and clear the officers in the eyes of the public by white-washing the case through the grand jury.

132. On January 23, 2023, APD's Internal Affairs investigators provided a private case briefing to both the Austin Community Police Review Commission ("CPRC") and the Austin Office of Police Oversight ("OPO"). After the briefing and an opportunity to review APD's full case file, both oversight bodies provided a recommendation. The seven members of the CPRC unanimously recommended an indefinite suspension of Officer Gutierrez, and the CPRC recommended indefinite suspension of Officer Serrato by a 6-1 majority vote. The OPO similarly recommended indefinite suspension for Officer Gutierrez; and it recommended counseling and guidance for Officer Serrato. The OPO report further recommended review and changes to certain APD policies and training, specifically related to "shoot until the threat has ended" and "off-duty law enforcement actions," among others.

133. APD, however, completely ignored the findings and recommendations of the CPRC and OPO. Instead, APD found that neither officer had violated department policy and that neither of them had done anything wrong. APD released an official statement on or about January 26, 2023 that stated the following:

a. "The Austin Police Department's (APD) Internal Affairs Division, with oversight from the Office of the Oversight (OPO), has completed the administrative investigation related to the Officer-Involved Shooting that occurred on January 5, 2021, involving Officers Gabriel Gutierrez and Luis Serrato. The involved officers'

respective chains of command, including Chief Joseph Chacon, have reviewed the thorough investigation, including the available evidence. Additionally, both the OPO and the Community Police Review Commission (CPRC) reviewed the incident and provided a recommendation to Chief Chacon before he made any disciplinary decisions."

b. "Chief Chacon has determined that Officer Gutierrez and Officer Serrato will not face discipline due to this incident. Both will resume their full-time roles as police officers with the Austin Police Department. . . . The officers involved ***acted according to their training and APD policy***." (Emphasis added.)

134. On information and belief, on or about January 26, 2023 both Officer Gutierrez and Officer Serrato returned to active street patrol duty as Austin police officers. On information and belief, both of them continue to patrol the streets of Austin as APD officers to the present day.

IV. CAUSES OF ACTION UNDER 42 U.S.C. § 1983

A. Claim No. 1: The City of Austin is Liable for Officer Gabriel Gutierrez's Use of Excessive Force Against Alex Gonzales, Jr.

135. Plaintiffs assert this cause of action against the City of Austin pursuant to 42 U.S.C. § 1983 and *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978). Each Plaintiff asserts his or her own individual cause of action under § 1983 as a wrongful death beneficiary of Alex Gonzales, Jr. under Texas law pursuant to Tex. Civ. Pr. & Rem. Code § 71.004(b). Each Plaintiff also asserts Z.A.G.'s cause of action under § 1983 as a wrongful death beneficiary and as "Next Friend" of Z.A.G. under Tex. Civ. Pr. & Rem. Code § 71.004(b). Plaintiffs incorporate by reference all allegations asserted in Sections I – III, supra.

136. The City of Austin employed Officer Gabriel Gutierrez as an APD police officer at the time he shot Alex Gonzales, Jr. ("Alex"). Gutierrez acted under color of law when he shot Alex

and took other law enforcement actions with respect to Alex on January 5, 2021.

137. Even though Gutierrez was "off-duty" at the time he initially encountered Alex, all of his relevant interactions with Alex (including shooting Alex) were undertaken under color of law. The APD General Orders in effect on January 5, 2021[3] expressly permitted off-duty officers to take law enforcement actions while off-duty.[4] The APD General Orders at the time also expressly authorized any off-duty officers to carry a firearm while off-duty as "a law enforcement officer as authorized by this order . . . ."[5] The APD General Orders at the time required that, when an off-duty officer decides to intervene and take a law enforcement action, the officer "should clearly identify himself as a police officer to those involved in the situation, if practicable."[6] Under the authority granted to him by the APD General Orders as an off-duty officer, Gutierrez made a decision to intervene with respect to Alex and the other passengers in Alex's vehicle, and Gutierrez undertook law enforcement actions with respect to Alex, including but not limited to using lethal force and shooting Alex. After he shot Alex, Gutierrez can be heard on the 911 call recording shouting at Alex in an attempt to identify himself as an Austin police officer. Gutierrez also can be heard on the 911 call recording continuing to take law enforcement actions with respect to Alex by shouting verbal commands for compliance.

138. Gutierrez shot Alex without provocation or justification. No reasonable police officer would have made the same decision to use lethal force that Gutierrez made, given the totality of the circumstances—including but not limited to the fact that Gutierrez was off-duty, Gutierrez's current physical and mental condition, the fact that Gutierrez was responsible for

[3] On information and belief, the APD General Orders in effect on January 5, 2021 were the APD General Orders issued on November 12, 2020.
[4] *See generally*, Austin Police Department General Orders Issued November 12, 2020 at §364.
[5] *See id.* at §364.3(a).
[6] *See id.* at §364.4.1(b).

creating and escalating the "road rage" encounter with Alex and Jessica, the fact that neither Alex nor Jessica presented a threat of physical harm to Gutierrez or anyone, the fact that Gutierrez had not witnessed the commission of a crime or a crime-in-progress, the fact that the use of lethal force presented a substantial risk of physical harm or death to innocent bystanders, the fact that Gutierrez had not identified himself as a police officer, the fact that Gutierrez had reasonable alternatives to the use of lethal force available to him, and the fact that Gutierrez had reasonable de-escalation techniques available to him.

139. Gutierrez's use of lethal force against Alex Gonzales, Jr. on January 5, 2021 amounted to excessive force in violation of Alex's rights under the Fourth and Fourteenth Amendments to the United States Constitution. The amount and degree of force used by Gutierrez was unnecessary and clearly excessive to any law enforcement objective or other need at the time.

140. Gutierrez's use of unconstitutional excessive force against Alex Gonzales, Jr. was a direct and proximate cause of substantial injuries to Alex Gonzales, Jr., including Alex's death. Plaintiff Alex Gonzales, Sr., Plaintiff Elizabeth Herrera, and minor child Z.A.G. each have suffered compensable damages, as described in more detail below, as a result of the wrongful death of Alex Gonzales, Jr. caused by the wrongful actions and excessive force of Gutierrez.

141. The City of Austin is liable for damages caused by Officer Gutierrez's use of excessive force against Alex Gonzales, Jr. The City of Austin's official policies, practices and customs were a direct and proximate cause of Officer Gutierrez's use of excessive force. The City of Austin's official policies, practices and customs were the motivating force behind Officer Gutierrez's use of excessive force against Alex Gonzales, Jr.

142. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known that APD's paramilitary training techniques, promotion of a warrior

mentality, and paramilitary culture had the effect of tolerating and promoting the use of excessive force by APD police officers. The City of Austin and APD policy makers had long known that each of the individual elements of APD's warrior mindset training and culture alleged above, alone and in combination, had the effect of causing and encouraging widespread use of excessive force by APD officers. Despite full knowledge, for many years, that APD's police training and police culture fostered a culture of violence and excessive force against civilians, the City of Austin and APD acted with deliberate indifference to these constitutional violations and continued to promulgate, implement, and enforce these training practices, official policies, and its warrior-mindset policing culture.

143. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known (and even intended) that APD's paramilitary training techniques caused a warrior mentality to become deeply and instinctively ingrained in each APD officers such that each officer would continue to view the world through the lens of the warrior mindset at all times, while on-duty or off-duty. Officer Gutierrez had undergone extensive police officer training with APD utilizing the paramilitary training techniques and had been subject to and a part of APD policing culture such that the warrior mentality characteristics described above had been deeply instilled within him at an instinctive level.

144. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known that proper policies and training are required to ensure that off-duty police officers recognize the different context and requirements between on-duty and off-duty police conduct. APD had long known that proper policies and training are required to minimize instances of excessive force by off-duty officers who take off-duty law enforcement actions. APD had long known that a policy allowing an off-duty officer to use lethal force prior to identifying as

a police officer was prone to causing instances of excessive lethal force. Despite the knowledge of these things, the City of Austin and APD acted with deliberate indifference to constitutional violations by continuing to promulgate, implement, and enforce an inadequate policy with respect to off-duty law enforcement actions, and by providing inadequate, dangerous, and counterproductive training to its officers regarding off-duty law enforcement actions.

145. On information and belief, Gutierrez believed that his actions with respect to Alex Gonzales, Jr. on January 5, 2021 (including but not limited to shooting Alex) would meet with the approval of supervisors and other Austin investigators of the events because he believed that his actions complied with the City of Austin's and APD's official policies, practices, and customs.

146. The City of Austin ratified the actions of Gutierrez and his use of excessive force against Alex Gonzales, Jr. by: (1) conducting a biased and improper investigation of Gutierrez's actions with the intent of clearing him from wrongdoing rather than pursuing the true facts; (2) finding that his actions did not violate APD policies, procedures, or customs; (3) returning him to patrol duty without suspending him or providing other appropriate discipline, without retraining him, and without any other negative employment consequences; and (4) continuing to promulgate, implement, and enforce the inadequate and dangerous policies, practices, and customs of APD in light of Gutierrez's actions on January 5, 2021.

B. Claim No. 2: The City of Austin is Liable for Officer Luis Serrato's Use of Excessive Force Against Alex Gonzales, Jr.

147. Plaintiffs assert this cause of action against the City of Austin pursuant to 42 U.S.C. § 1983 and *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978). Each Plaintiff asserts his or her own individual cause of action under § 1983 as a wrongful death beneficiary of Alex Gonzales, Jr. under Texas law pursuant to Tex. Civ. Pr. & Rem. Code § 71.004(b). Each Plaintiff also asserts Z.A.G.'s cause of action under § 1983 as a wrongful death

beneficiary and as "Next Friend" of Z.A.G. under Tex. Civ. Pr. & Rem. Code § 71.004(b). Plaintiffs incorporate by reference all allegations asserted in Sections I – III, supra.

148. Serrato was an on-duty Austin police officer at the time he responded to the scene of Alex's shooting after Gutierrez called 911. Serrato's actions with respect to Alex (including shooting Alex) were undertaken under color of law.

149. Serrato fatally shot Alex without provocation or justification. No reasonable police officer would have made the same decision to use lethal force directed at Alex that Serrato made, given the totality of the circumstances—including but not limited to the fact that Alex was not in possession of a weapon and did not have immediate access to a weapon, the fact that Alex never did anything to indicate he posed a risk of physical harm to anyone, the fact that Alex had been visibly shot in the head, the fact that Alex was likely to be suffering from impaired hearing and/or audio processing, the fact that Alex could be seen making only slow and lumbering movements without any sudden or unexpected movements, the fact that the use of lethal force presented the risk of serious physical injury or death to bystanders, the fact that Serrato had increased his own risk of danger and escalated the situation by unreasonably abandoning his position of cover, and the fact that Serrato had reasonable de-escalation techniques and reasonable alternatives to the use of lethal force available to him.

150. Serrato's use of lethal force against Alex Gonzales, Jr. on January 5, 2021 amounted to excessive force in violation of Alex's rights under the Fourth and Fourteenth Amendments to the United States Constitution. The amount and degree of force used by Serrato was unnecessary and clearly excessive to any law enforcement objective or other need at the time.

151. Serrato's use of unconstitutional excessive force against Alex Gonzales, Jr. was a direct and proximate cause of substantial injuries to Alex Gonzales, Jr., including Alex's death.

Plaintiff Alex Gonzales, Sr., Plaintiff Elizabeth Herrera, and minor child Z.A.G. each have suffered compensable damages, as described in more detail below, as a result of the wrongful death of Alex Gonzales, Jr. caused by the wrongful actions and excessive force of Serrato.

152. The City of Austin is liable for damages caused by Officer Serrato's use of excessive force against Alex Gonzales, Jr. The City of Austin's official policies, practices and customs were a direct and proximate cause of Officer Serrato's use of excessive force. The City of Austin's official policies, practices and customs were the motivating force behind Officer Serrato's use of excessive force against Alex Gonzales, Jr.

153. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known that APD's paramilitary training techniques, promotion of a warrior mentality, and paramilitary culture had the effect of tolerating and promoting the use of excessive force by APD police officers. The City of Austin and APD policy makers had long known that each of the individual elements of APD's warrior mindset training and culture alleged above, alone and in combination, had the effect of causing and encouraging widespread use of excessive force by APD officers. Despite full knowledge, for many years, that APD's police training and police culture fostered a culture of violence and excessive force against civilians, the City of Austin and APD acted with deliberate indifference to these constitutional violations and continued to promulgate, implement, and enforce these training practices, official policies, and its warrior-mindset policing culture.

154. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known (and even intended) that APD's paramilitary training techniques caused a warrior mentality to become deeply and instinctively ingrained in each APD officers such that each officer would continue to view the world through the lens of the warrior mindset at all

times, while on-duty or off-duty. Officer Serrato had undergone extensive police officer training with APD utilizing the paramilitary training techniques and had been subject to and a part of APD policing culture such that the warrior mentality characteristics described above had been deeply instilled within him at an instinctive level.

155. On information and belief, Serrato believed that his actions with respect to Alex Gonzales, Jr. on January 5, 2021 (including but not limited to shooting Alex) would meet with the approval of supervisors and other Austin investigators of the events because he believed that his actions complied with the City of Austin's and APD's official policies, practices, and customs.

156. The City of Austin ratified the actions of Serrato and his use of excessive force against Alex Gonzales, Jr. by: (1) conducting a biased and improper investigation of Gutierrez's actions with the intent of clearing him from wrongdoing rather than pursuing the true facts, (2) finding that his actions did not violate APD policies, procedures, or customs, (3) returning him to patrol duty without suspending him or providing other appropriate discipline, without retraining him, and without any other employment consequences, and (4) continued to promulgate, implement, and enforce the inadequate and dangerous policies, practices, and customs of APD in light of Serrato's actions on January 5, 2021.

C. Each Plaintiff Has Suffered Significant Damages as A Result of the Excessive Force Used By Gutierrez and Serrato.

157. Alex Gonzales, Jr. was a happy, loving man who adored his parents, who cherished his newborn son, and who embraced his new role as a father to Z.A.G. Alex's tragic and unnecessary death at the hands of police violence, acting in violation of Alex's constitutional rights, caused severe and permanent damages, including Alex's death.

158. Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera each seek to recover the following categories of damages in their respective capacity as wrongful death beneficiaries of

Alex, pursuant to Texas Civil Practice and Remedies Code § 71.004(b):

a. Mental anguish damages (past and future) for the emotional pain, torment, and suffering each Plaintiff has experienced and will continue to experience because of the death of their son;

b. Physical pain and suffering (past and future) each Plaintiff has experienced and will continue to experience because of the death of their son;

c. Loss of companionship and society damages (past and future) for the loss of positive benefits flowing from the love, comfort, companionship, and society that each Plaintiff would have received from Alex had he lived; and

d. Pecuniary loss damages (past and future) for the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that each Plaintiff would have received from Alex had he lived.

159. In their capacity as "Next Friend" to Z.A.G., Plaintiffs assert that Z.A.G. has suffered the following categories of wrongful death damages that may be recovered pursuant to Texas Civil Practice and Remedies Code § 71.004(b):

a. Future lost wages, lost earning capacity, and loss of economic support from Alex Gonzales, Jr.;

b. Mental anguish damages (past and future) for the emotional pain, torment, and suffering Z.A.G. has experienced and will continue to experience because of the death of Z.A.G.'s father, Alex;

c. Physical pain and suffering (past and future) Z.A.G. has experienced and will continue to experience because of the death of Z.A.G.'s father, Alex;

d. Loss of companionship and society damages (past and future) for the loss of

positive benefits flowing from the love, comfort, companionship, and society that Z.A.G. would have received from his father, Alex, had he lived; and

e. Pecuniary loss damages (past and future) for the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that Z.A.G. would have received from Alex had he lived.

160. Each Plaintiff (both individually and as "Next Friend" to Z.A.G.) further seeks to recover the following categories of damages:

a. Prejudgment and post-judgment interest;

b. Costs of court;

c. Reasonable and necessary attorneys' fees incurred by Plaintiffs through trial, along with reasonable and necessary attorneys' fees that may be incurred by Plaintiffs for any post-trial proceedings or appeal, pursuant to 42 U.S.C. § 1988; and

d. Any further and additional relief to which Plaintiffs may be legally entitled.

V. REQUEST FOR A JURY TRIAL

161. Plaintiffs request a jury trial on all issues that legally may be tried to a jury.

VI. PRAYER FOR RELIEF

162. Plaintiffs request that the City of Austin be summoned to appear and answer Plaintiffs' allegations. After a jury trial regarding the asserted claims and causes of action, Plaintiffs pray the court enter judgment in their favor on the asserted claims under 42 U.S.C. § 1983, assess monetary damages for the injuries alleged above, and award any other relief to which Plaintiffs are legally entitled.

Dated: August 22, 2023

Respectfully Submitted,

/s/ Donald Puckett
Donald Puckett (Texas Bar No. 24013358)
Clifford Chad Henson (Texas Bar No. 24087711)
(*Application for admission forthcoming*)
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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ *Donald Puckett*
Donald Puckett

COMPLAINT
EXHIBIT A

Memorandum

Austin Police Department

Headquarters Bureau/Training Division

To: **Chief Brian Manley**
From: **Dr. Sara Villanueva**
Date: **May 22, 2020**
Subject: **APD Training Academy Review and Strategic Plan**

This memo provides the background and context necessary for a full understanding of the review analysis and strategic plan that follow. In September 2019, I began my second career as the inaugural Organizational Development and Training Manager at the Austin Police Department, specifically focusing on the Training Academy. With over fifteen years of leadership experience in academia, I came to APD with significant proficiency in curriculum development, teaching and learning methods, and Diversity, Equity, and Inclusion work.

While getting acclimated in the first months, my initial priority at the Training Academy was to conduct a needs assessment. Soon thereafter, I decided instead to conduct a more comprehensive SWOT analysis to create a developmental pathway to organizational and academic success for academy instructors, cadets, and leadership. After the initial report was drafted, I was informed by APD leadership that the full and final report would be included in APD's official response to Resolution No. 20191205-066. To that end, what follows is the final report which includes the SWOT analysis, followed by a strategic training plan draft that will require review and approval from the Chief of Police and the APD Executive Team.

The creation of this document has been an iterative process. The initial draft was based on observations made early on in my tenure at APD. The final report incorporates those early observations as well as recent, more comprehensive professional experiences. It is important to note that although I am employed by APD, and although I did, on occasion, seek out consultation from colleagues in academia with expertise in specific fields, the work outlined in this report is independent, objective, and supported by research wherever possible. As such, a reference page is included as an addendum for further review.

Respectfully,

Sara Villanueva, Ph.D.

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2020

AUSTIN POLICE DEPARTMENT TRAINING ACADEMY

SARA VILLANUEVA, PH.D.

ORGANIZATIONAL DEVELOPMENT & TRAINING MANAGER | May, 2020.

Austin Police Department

CADET TRAINING ACADEMY

REVIEW ANALYSIS

This analysis was completed with the understanding that the reviewer's perspective can and will change with more time, experience, and insight at the Austin Police Department Training Academy. It should be noted that despite some overlaps in instruction, the following assessment primarily focuses on the academic programming, also known as the cadet side of the training academy, and not necessarily on the Learning Skills or Continuing Education areas.

The method of review is based on conducting a SWOT analysis, which is an organizational/planning tool used to understand the Strengths, Weaknesses, Opportunities, and Threats involved in running an organization. SWOT analysis aims to identify key internal and external factors seen as important to achieving an objective. SWOT analysis groups key pieces of information into two main categories:

Internal factors — the strengths and weaknesses internal to the organization

- What do you do well?
- What unique resources can you draw on?
- What could be improved?
- Where do you have fewer resources?

External factors — the opportunities and threats presented by the environment external to the organization

- What opportunities are open to you?
- What trends could you take advantage of?
- How can strengths be turned into opportunities?
- What threats do your weaknesses expose you to?

SWOT analysis is typically used as part of a strategic planning process, and in this case is being utilized to understand what works, what doesn't, and guide the organization in creating a strategic plan for the Austin Police Department Training Academy.

Strengths	must be maintained, built upon or leveraged.
Weaknesses	must be remedied, changed or stopped.
Opportunities	must be prioritized, captured, built on and optimized.
Threats	must be countered or minimized and managed.

Strengths

Information gathering stage of analysis. Reviewer has had numerous formal and informal meetings and discussions with the training commander, training leadership, staff, several instructors, and a few patrol officers. Further, reviewer has conducted class observations and participated in numerous departmental and academy leadership meetings. This collection of qualitative data yielded the following observed strengths that have been organized into potential areas of strategic focus. Note that this is an assessment as of the present time (i.e., snapshot), and does not reflect any historical context or institutional memory on the part of the reviewer.

Organizational Structure

- Excellent leadership. The training academy Commander is very organized, responsive, and consistently communicates very well with leadership at the training academy. Commander holds weekly briefing meetings with leadership, systematically reviewing progress of cadets in academics, learned skills, personal issues, etc. Very thorough, very informative. Through the chain of command, academy leadership and instructors all work collaboratively to keep one another informed of any changes in status for each and every cadet.
- Hierarchical structure in place lends stability and consistency in the ability to effectively communicate and direct information up and down the chain of command.
- All members of academy leadership are well informed and keenly aware of TCOLE and BPOC standards and remain vigilant about compliance. After numerous meetings with leadership who directly oversee academy courses and instructors (Sergeant and Corporal over cadet training), it is clear that training academy curriculum carefully adheres to three regulatory areas: TCOLE, BPOC, and Austin Police Department, and has, over time, incorporated/added courses in response to legislative mandates.
- Structure of Instructor Departments, POCs of those departments, and which classes are taught by which department/instructor is documented and stored on network drives.

Culture

- While still supporting the paramilitary structure, academy staff all contribute to a relaxed and family-like atmosphere. The work environment is such that people are respectful, encouraging, and supportive of one another. These daily behaviors create a cultural milieu that is extremely important because it appears to lead to mutual trust, collective efficacy, and confidence in the academy.
- Instructors informally gather during lunch to communicate any relevant information regarding cadets or classes, but more importantly, to check in with one another, decompress, and build a shared community. This comradery is vital to morale, job satisfaction, and productivity.
- Ethnic and racial diversity in academy leadership is excellent. Despite being securely set in a chain of command, diversity of thought, perspective, gender, etc. is actively sought out and thoughtfully considered when making decisions at the weekly academy leadership team meeting. If the objective is to have a police force that reflects the community they protect, APD Recruiting has made great strides in efforts to increase the number of female recruits. It is similarly important to be inclusive of *all* diverse groups and perspectives: transgender and non-binary, diverse religious beliefs, etc. An excellent example of APD Training inclusion, which also incorporates community input, is a series of Informa training modules on Transgender issues and the use of a gender-neutral affidavit. Sgt.

Michael Crumrine and training academy instructor Ofc. Greg Abbink have included subject matter experts in the community as part of this important project. Clearly, being deliberate in the awareness of individuals' experiences is an ongoing goal for everyone. That said, increased diversity in the faculty would be beneficial, as they are the ones with whom cadets interact and are influenced by most. More on this later in the Weaknesses section under Diversity, Equity, and Inclusion.

Curriculum

Note that a complete and comprehensive review of the entire curriculum will take significant time, and in my opinion, should be an ongoing, iterative process. This said, the curriculum review process is currently underway. The following observations are based on the initial review:

- When considering the length of the curriculum (8-month academy), it is understood that the most recent revision of the BPOC resulted in many (8) of the classes currently taught at the Academy as Intermediate level now be considered part of the BPOC. Continuing work in this review will examine potential opportunities for efficiencies and possible consolidations.
- Training leadership, specifically the Sergeant and Corporal over cadet training work diligently, and go to almost extreme lengths to ensure complicated and ongoing schedule of courses for academies (regular and modified) meet expected regulatory standards. They also go to great lengths to manually overlap concurrent class schedule to ensure that all required courses are included and look for potential conflicts in schedules. This too is an iterative and tedious effort. This point will be further discussed in Weaknesses section.
- Sequencing of courses in academy curriculum is normally considered when new cadet classes are scheduled, particularly when classes begin to overlap. While preparing this document, effects of the national pandemic COVID-19 took hold and required training to be moved online. In doing so, the priority with respect to sequencing was to move all 'cognitive' courses online, while pushing all experiential/hands-on courses (i.e., firearms, defensive tactics) toward the end of the schedule, when cadets are expected to return to campus.
- In preparation for Cadet Class #143, instructors were tasked with conducting a new review of individual lesson plans for their respective courses to ensure compliance with new BPOC standards; and further, to assess time required to teach each course to meet each BPOC module time requirement. In addition to this general time assessment, particular attention was paid to those subjects/courses in which APD actual hours taught far exceed the minimum hours required by BPOC again to look for possible efficiencies.
- Overall curriculum is in compliance of TCOLE standards, and is continually monitored for compliance when updates are made to any regulations. Further, leadership work with instructors to review curricula to ensure TCOLE/BPOC requirements are met.

Teaching Effectiveness

- With few exceptions, the majority of instructors that I have observed are well prepared in the course content outlined using TCOLE lesson plans. It is clear that most faculty have excellent command of experiential knowledge as it relates to the topic they teach.
- In general, instructors are well-organized, run classes efficiently, and begin and end on schedule.
- Of the instructors observed, teaching methods and styles vary significantly. Some due to personality, some to teaching experience, and some due to the teaching methods to which they are accustomed or trained. It is clear that some instructors are more comfortable and at ease in the classroom than others. *The possible influence of a class observer on teaching should be considered.*

The vast majority of academic classes observed thus far present content material on Power Point slide presentation format, but have varying degrees of interactive learning.

- Overall, instructors do a fine job of checking for understanding, and generally being open to questions after each section/class.
- All instructors who have been observed have expressed being open to feedback and suggestions to improve teaching.
- Most recently, the abrupt necessity to move courses online due to COVID-19 has challenged instructors to transition to online teaching, which is no easy task. Based on my observations of the online courses thus far, I have been impressed by the work that has been done by instructors to make this unexpected transition. Again, I have witnessed significant variability in the ease in which the transition has been made as well as with the teaching methods and learning strategies employed by instructors; but overall, instructors have risen to the challenge done an outstanding job during these unprecedented and difficult times.

Weaknesses

Based on initial observations, individual interviews/meetings, baseline information-gathering for context purposes (reading TCOLE, BPOC, President's Report, Community Policing, ICAT, and Matrix), and more recently attendance at the inaugural National Symposium on Police Academies and Training and the 2019 TCOLE Conference, items below are identified not simply as *weaknesses* in the Academy, but as *challenges* for potential future strengths in the overall objective to maximize organizational development and teaching effectiveness.

Organizational Structure: Process Improvement

One of the most pressing challenges pertains to systematic and reliable processes that must be put into place in order to ensure consistency, reliability, and efficiency. Although significant daily efforts are made by staff to keep the training academy running effectively, having consistent and reliable processes in place would contribute to running it effectively *and* efficiently. It would also lead to programmatic sustainability and security, given staff changes across time. Current challenges identified thus far in this category include:

- Process around communication and relevant/important dates and notices within the Academy involving leadership/ instructor/cadets. Presenting relying primarily on email and verbal messaging.
- Processes around and organization of course material for instructors - in addition to the ability to post announcements or communicate with entire class or individual student cadets (versus email). Presently all material saved to the network. Organization of the network folders is unclear, with several files being outdated or empty, and little consistency in classification or naming structure.
- Process of scheduling academy classes (overall – excel sheet with dates of academy cadet classes across years), and specific course schedules for each cadet class (i.e., #141, 142m, 143). At present, there is a clear overreliance on Excel to create academy schedules – primarily because it is the only tool available; secondarily because it is the way it has always been done, thus default.
- Consistent and ongoing/sustainable process of tracking BPOC/Academy course alignment and hours. Currently, all scheduling is done manually using Excel spreadsheets to create weeks 1- 32 populated by module/topic, printing out, manually manipulating the printed weeks on a table, then

going back to Excel to make modifications. The current system of scheduling, course alignment, and tracking is inefficient, time consuming and leaves significant room for human error. Because it is all done without the use of any scheduling software, the chances for error are high, thus creating the need for a reliable process. Because it is well understood that staff turnover is a reality, a clear process must be put in place to ensure consistency, reliability, and sustainability regardless of staff turnover.

- Process of systematic and consistent organization of all training academy related documents, including but not limited to documentation required and tracked by TCOLE: currently all held on the network Drive. Note that documents referred to in this section are separate from instructor teaching material. A process that involves a clear and systematic file naming structure, classification, or taxonomy is needed.

Culture

- Paramilitary culture
    - APD Training Academy operates under a paramilitary training format with strict adherence to chain of command and employs 'behaviorist instructional methodologies' which rely on the assumption that learning occurs primarily through the use of reinforcement schedules, behavior modifications, and other behavioral approaches (Birzer, 2003; Birzer and Tanneill, 2001, 2004).
    - Although the paramilitary-based training format may build camaraderie, research has shown that it tends to be associated with high dropout rates (Blumberg, Schlosser, Papazoglou, Creighton, & Kay, 2019), as it fails to acknowledge individual differences in learning styles, personalities, and interpersonal skills in cadets as well as instructors.
    - There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-oriented police services model. A growing body of research has shown that paramilitary-structured academies do not align well with the principles of community policing and problem solving which are based on collaborations and partnerships (Chan, Devery, & Doran, 2003; Chappell & Lanza-Kaduce, 2010; Conti, 2011).
    - This model also overrides and perhaps even neglects basic principles of adult-learning theory (andragogy).
- Diversity, Equity, Inclusion
    - Diversity amongst the faculty is paramount for any learning institution. For decades, researchers, social scientists, and teaching & learning scholars have argued the various merits of not only having a diversified student body, but just as importantly, a diverse faculty. With respect to teaching, mentoring, and training, there is also significant evidence showing links between institutions having diversity in the faculty and various indicators of achievement in students from diverse backgrounds.
    - The good news is that there has been an increase in diversity (gender and ethnicity) when it comes to cadets recruited and accepted into the APD Training Academy. And despite recent increases in diversity amongst leadership at the training academy, the not-so-good news is that the faculty teaching those cadets are still primarily White males. Moreover, the cultural ethos at the academy is still securely grounded in patriarchal belief systems and practices, with some concerning indicators being subtle or subliminal and others more obvious.
- Wellness

- Instructors' physical wellness is attended to and evidenced by routine individual and group workouts. However, mental and psychological wellness should be similarly encouraged and supported, particularly as it relates to the stressors associated with back to back teaching.
- Building psychological and emotional wellness in cadets should also be a priority that is embedded into the curriculum. The current curriculum includes some coverage of stress management and mindfulness at the beginning of the academy, but this is an issue that should be reinforced throughout the entire 32-week academy.

Curriculum

- As part of the internal audit mandated by Resolution 66, specific courses in the existing curriculum are currently being reviewed. Recommendations regarding assessment of those courses as well as evidence-based recommendations will be included in a review summary report.
- The 32-week academy contains courses that include the Basic Police Officer Courses, and in addition, intermediate certification courses as well as APD specific courses. In accordance with the Texas Commission on Law Enforcement regulations, BPOC courses cannot be eliminated or modified; however, the value add of other courses should be assessed to eliminate any courses that are not as relevant or impactful as in the past, and perhaps include new courses that fall in line with updated, innovative curriculums being used in other training academies across the country.

Teaching Effectiveness

Current challenges include:

- A major area with opportunities for development relates to Instructor Preparedness, Training, and Evaluation. The following observations and subsequent suggestions are based on the fact that effective instruction is at the core of what we do at the APD Training Academy.
  - Instructor Job Description, Expectations, and Evaluation: Under *Duties and Responsibilities*, the current job description for Cadet Training Instructor does not explicitly include any descriptions or expectations of teaching or pedagogical training if hired. The job description is essentially a lengthy list of items. The inclusion of listed items such as "Ability to write legibly and to read" communicates a very low academic standard, particularly given the position as an educator.
  - Regarding performance evaluations, the instructor evaluation form (SSPR) must also incorporate corresponding teaching/pedagogical expectations reflecting those detailed in Cadet Instructor job description. In sum, instructors must be appropriately trained and developed as professional educators, with subsequent evaluation of their teaching effectiveness.
  - Instructor Training: Cadet Training Instructors do not receive any formal preparation or training on how to teach effectively. The Basic Instructor Course (BIC) offers TCOLE mandated basic information regarding logistical issues around teaching, but does not go into more nuanced, yet highly impactful teaching strategies and considerations, particularly as they relate to adult learning theory. After the BIC, new instructors receive guidance on following the processes already in place, and are expected to shadow current instructors in preparing lesson plans and teaching. However, there is no formalized onboarding process in place to determine when they have sufficiently

prepared to begin teaching independently, other than existing instructor discretion. A more formalized professional development plan should be created and utilized.

- Instructor Teaching Resources: Both incoming and existing instructors have very little resources regarding effective teaching methods that focus on adult learning theory or teaching in the context of continually changing cohorts.
- Instructor responsibilities on Course Content. In conducting numerous informal class observations, and in reviewing lesson plans and Power Point presentations, it is clear that there is considerable variability in quality and understanding of content material being presented. It is clear that TCOLE provides the essential material to be covered via pre-prepared lesson plans. That said, it is the responsibility of each instructor to learn the material, conduct further research for understanding and context, and obtain a firm understanding of the course material before teaching the class.

- Another area with opportunities for development relates to exams being created for and given to APD Cadets. Despite other areas of assessment required for successfully completion of the APD Training Academy (PT, Firearms, etc.), exam performance carries substantial weight in the success or failure of academy completion. Due to the policies around number of test failures, and the 80% passing standard, cadets are dismissed, at times, for academic reasons. Thus, a thorough review of testing policies and procedures is warranted, as well as investigations into more current testing platforms. At present, the process of creating exams is adequate, but not optimal, as it is tedious, over-reliant on multiple choice questions (not ideal), and perhaps a bit antiquated.

Opportunities

In the context of SWOT analysis, the section on Opportunities focuses on elements in the larger environment/community that could be used to an advantage for the Austin Police Department. Opportunities must be prioritized, captured, built upon and optimized. Below are considerations for this category.

Organizational Structure: Process Improvement

The vast majority of problematic issues in the previous section would be addressed by simply adopting a secure and reliable Learning Management System with the appropriate capabilities, and establishing a reliable process. After several months spent investigating various platforms that could align with the needs of the academy as well as meet necessary City of Austin security criteria, academy leadership is now considering the adoption of Informa LMS, Scheduler, and Evaluation/Testing bundle. This bundle of services will increase efficiency, organization, security, and in the long term, increase productivity.

A securely managed LMS could not only provide a platform for all Academy/Teaching-related material to be housed in an organized manner, but would also provide more efficiency to leadership in curriculum planning (including any updates or modifications) for current and subsequent cadet classes, save instructor time in course prep and planning, and in general make instructor's lives a bit easier by having a course set up and ready to go, even in the event that any given instructor were required to step in on short notice. Once a course is set up on the LMS, the contents: lesson plans, lecture slides, current/relevant video clips, assignment, class activities, online quizzes or exams, any collaborative work, and gradebooks are all securely housed and easily accessible to anyone with authorized secure

log-in credentials. Courses stored on the LMS would only require updates each term thereafter. Thus, an appropriate LMS can provide efficiency, ease, and save time in course preparation as well as a means by which secure communication, upcoming events, etc. can occur between all constituents at the training academy. Most importantly, it can provide security and ensure accurate BPOC and TCOLE tracking**.** Based on shared best practices between police training academies across the United States, the use of this type of technology has proven to be a prospective solution for the APD Training Academy.

Culture

Paramilitary culture

Despite many successes in the long-held paramilitary tradition, numerous scholars and community members alike have proposed a shift in the culture that currently exists in the majority of police training academies across the country. The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime. There is no doubt that this warrior mentality can be very useful in addressing certain acute situations, and of course, officer safety must continue to be a priority in training. However, most interactions with community are not acute. Instead, the focus of training should be on nurturing the relationship between police and the community they serve. The warrior mindset, and the fear that drives it, must change (Sanburn, 2016, Stoughton, 2015). It is time to reclaim the wisdom and power of servant leadership where officers are viewed as guardians that serve and protect their community.

Police departments across the nation are responding to this call to action by moving away from a paramilitary model that emphasizes fear-based learning and strict adherence to commands (i.e., the warrior model), toward an adult learning model that instead values high quality instruction and the development of critical thinking skills, effective communication, and better emotional intelligence in cadets' preparation to work collaboratively with the community they serve and protect (i.e., guardian model). Researchers stress the importance of adopting an adult learning model in training recruits to work within a community-oriented policing model (Schlosser, 2013). Using shared innovative practices from other police training academies, the Austin Police Department Training Academy should seriously consider this cultural/paradigm shift by moving beyond behavioral training techniques and integrating the following psychosocial skills into the curriculum to truly 'build and educate the best police officers in the nation':

- Understanding basic human behaviors in the context of policing (basic Applied Psychology course)
- Cognitive skill training (Decision-making/Judgment, Impulse control/Safety, Adaptability/Flexibility)
- Emotional skills training (Emotion regulation/Stress tolerance, Emotional Intelligence)
- Social skills training (Social competence, Teamwork/Collaboration, Assertiveness/Persuasiveness)
- Moral skills training (update and expand current teachings on Integrity & Ethics)

Further, future officers in training should be given the opportunity, while still in the academy, to actively engage with and work in the community, alongside the people that they will serve. Whether this is in the form of ride outs, and/or better yet, participation in community sponsored and community-building events. This shift in emphasis would clearly signal that APD and the training

academy are committed to rebuilding a strong, positive relationship with the Austin community. In sum, modern policing faces increased complexity, which requires officers to respond to difficult and quickly changing challenges of a diverse society in more flexible ways (McGinley, Agnew-Pauley, Thompson, & Belur, 2019). Thus necessitating a greater emphasis on the afore mentioned skills.

Diversity, Equity, Inclusion

The issue of race as it relates to policing is clearly an area of concern for many. Numerous efforts throughout the city and department are currently underway to address citizen concerns. At the training academy, several courses addressing multiple topics around race, culture, and community (i.e., Fair & Impartial Policing, Multiculturalism, Racial Profiling, History of Policing, and others) are currently taught in the existing curriculum. As part of the Resolution 66 internal audit, these courses are currently under substantial review and the subsequent report will offer more insight on making improvements to content and teaching effectiveness. When completed, course reviews, which are based on formative assessments, will result in several recommendations given to not only update the content of the materials to reflect current scholarly research on diversity, equity, and inclusion issues, but will also include pedagogical strategies to promote effective delivery of the material. Further, colleagues at The University of Texas School of Law, in collaboration with the Office of Police Oversight, have created a new course that gives insight into the History of Policing and Race in Austin. By including this course in the curriculum, the training academy ensures diverse perspectives are being presented when learning about police history in context.

To become more diverse and more inclusive, the training academy must examine their own organizational capacity to prepare all cadets for a world that is changing, complex, and already very diverse. APD cannot expect future officers to meet the intricate needs of our community if we cannot meet those needs within our own organization. Any disparities within the academy must be rectified by closely examining cadet recruiting policies and practices, interview and hiring board processes for cadets and instructors, yearly evaluation processes for instructors, and shifting the strategic goals of the organization toward a more inclusive excellence model. The inclusion of unconscious bias assessments into the cadet recruitment process, and cultural competency training for all academy instructors and staff would both be good examples of the training academy's commitment to Diversity, Equity, and Inclusion. Specifically, with respect to the fact that faculty of color and female faculty are underrepresented at the academy, it is worth recognizing that such underrepresentation is detrimental to the success of student cadets of color and female cadets.

As part of a culture shift whereby true inclusion of all diverse perspectives is embraced, another opportunity for APD is to include programming based on the work done by Dr. Glenn Singleton and his colleagues in *Beyond Diversity: Creating Courageous Conversations About Race*. At present, leadership at the APD Training Academy has attended the workshop. However, a formal proposal is being created to include a more comprehensive and sustainable program tailored for APD which includes Leadership Development as well as cadet and current officer education on cultural sensitivity and competencies.

Times have changed and the academy, as well as the department as a whole, must change with it. A genuine cultural shift could increase organizational agility, and would go a long way toward improving

police and community relations in Austin (Kringen, 2019; Kringen & Novich, 2017; Perez McCluskey & McCluskey, 2008; Schuck, 2016; Schuck, 2017; Silvestri, 2019; Todak, 2018).

Wellness

Instructors. To avoid instructor burnout that could lead to low morale, low effort, and low job performance, and to avoid higher turnover rates for instructors at the academy, APD leadership must be mindful of recovery time between cadet classes. At present, when accounting for both regular and modified cadet classes, instructors have very little, if any, time off from teaching between the end of one cadet class and the beginning of the next. Based on first-hand experience as well as a significant body of literature, this is a vital issue that directly impacts job performance and, in this case, teaching effectiveness.

Cadets. It would behoove both current and future officers for the academy to place more emphasis on preparing cadets to successfully cope with the emotional challenges of this profession. APD training has the opportunity to infuse into the existing curriculum comprehensive programming where mental health experts can address officers' emotional regulation and stress tolerance in an effort to build long-term skills that cadets can take into their future work- and life-experiences.

Curriculum

Based on supported arguments made in *New Directions in Police Academy Training* (Blumberg, Schlosser, Papazoglou, Creighton, & Kay, 2019), the curriculum should also include previously mentioned courses taught by content experts that focus on the following evidence-based topics: understanding basic human behaviors (i.e., a tailored applied psychology course), social skills (i.e., coping skills to help officers navigate difficult encounters when interacting with community members, as well as coping with the strain that police work places on them, their families, and friends), moral development, and effective communication strategies. These courses, along with those that focus specifically on Diversity, Equity, and Inclusion issues should be solidly grounded in current, empirical research and taught by outside scholars who have expertise in the fields.

Further, because the 32-week academy is already longer than most police training curricula, and because adding more classes without judiciously reviewing the value-add of existing courses, the academy should reconsider including all intermediate level courses as part of the curriculum before graduating new officers. From the reviewer's perspective, it makes sense that only after having some time and experience in the role of police officer should she/he/they then be expected to begin to think about intermediate level courses. The experiences themselves would help new officers make sense of and provide context for the intermediate level courses, thereby leading to more meaningful learning and retention of information.

Teaching Excellence

Make no mistake. Police training academies are institutions of higher learning. There is a nuanced but important difference between training and teaching. Training denotes a hands-on, practical, step 1, step 2 method of conveying information. Teaching seeks to impart knowledge and provide opportunities for deep comprehension and long-term retention of knowledge by relying on learning theories and engaging students using various strategies and methods. In the context of police academies, both training and teaching can go hand in hand. But, when considering the importance of the material being taught by academy instructors in the classroom, the fact that they really are creating

future officers for our community, and the fact that we need new officers to remember what they learned when out on the street, the stakes are high and we should get serious about investing in our instructors.

The reviewer recognizes that the academy is not a college or university, but it is a place of learning nonetheless. And as such, making sure that academy instructors have the training, experience, and resources necessary to reach teaching excellence should be a top priority. Instructors, cadets, officers, and the community as a whole all deserve this.

Regarding comments made in the previous weaknesses section around Instructor preparedness and development, below are reviewer recommendations:

- Revise Cadet Training Instructor job descriptions to include appropriate expectations, duties, and responsibilities around Teaching Effectiveness. Similarly, revisions to the Cadet Training Instructor evaluation (SSPR) are being suggested to ensure that the updated SSPR appropriately reflects the corresponding revisions to the job description.
- Similarly make modifications to Cadet Selection Board materials to incorporate appropriate pedagogical language throughout document. I.e., include terms such as Teaching, Active/Adult Learning, etc., to signify that the position goes beyond the ability to complete a lesson plan template and create power point slides, rather based in serious pedagogical methodology. "Grading" of presentation should also include ratings on teaching methods.
- Review our Basic Instructor Course offered at the training academy to make sure it includes information on
  - Cohort/Generational differences
  - Pedagogy/Teaching Adult Learners
  - Active and Interactive Learning in the Classroom
  - Effective Teaching Methods
- Create a series of Train the Trainer (T3) teacher education online courses that new instructors would be required to take BEFORE teaching independently. Course topics could include the following (see bullets below), and would be offered online so that new (and existing) instructors can complete them while working around their schedules. Note: this could be accomplished via the now accessible LinkedIn Learning tool where specific learning pathways can be developed specifically for academy instructors.
  - Teaching adult learners
  - Innovative teaching techniques: focus on active, interactive, and inclusive models
  - Presentation 2.0: Moving beyond Power Point slides
  - Other topics at suggestion of instructors, training academy leadership, commander
- Provide new instructors a mentor/coach (experienced instructor) for onboarding. Provide mentor instructor a checklist of items to cover with new instructor. After initial probationary period, and once new instructor is teaching independently, mentor should conduct course observations and periodically scan through instructor course material to ensure that that course content and corresponding exam content are regularly updated to reflect current/relevant course content information (including video clips, examples, activities, etc.)

Instructor resources and Professional development:

- Transform the existing training academy website to include a page/tab for instructor access only, specifically dedicated to housing various instructor resources such as empirical articles on

teaching and learning, video clips, sample class activities, instructor cheat sheets on how to keep content updated, etc.

- Create a peer-review program that would utilize class observations to provide individual instructors the opportunity to receive valuable feedback from a senior peer instructor on teaching effectiveness:
    - Class observation: Observer selects, or is assigned a course and instructor to observe.
    - Observer thoroughly reviews lesson plan and informs instructor of pending observation date.
    - Observer sits in on class, and completes a Class Observation rating/feedback form. Form would include sections such as presentation style, rapport and communication with students, content knowledge - and whether content and examples are current, etc.
    - Observer meets with instructor to give feedback on lesson plan and class.
    - Each instructor would have a minimum of one course observation per cadet class. This class observation form could/would be used by supervisor to inform the Instructor's evaluation (SSPR) ratings, as this is an indicator of Teaching Effectiveness.
- As part of the Teaching Excellence program, create incentives for instructors whereby results of various assessments including class observations designate high performers to be publicly recognized. Examples: Instructor of the Year recognition, specific lapel pins for academy instructors, certificates of recognition signed by the Chief, recognition on website.
- Develop yearly Continuing Education credit courses specifically for professional development in Teaching.
- Partner with local colleges/university's Teaching Excellence programs to access Teaching resources, symposia, workshops, etc.

Instructor responsibilities on course content:

- Before teaching any course, instructors should review the course material, investigate any possible updates to course content (including any new legislative changes and/or research findings), and have a firm understanding of content being covered. This is particularly important for any instructor teaching a new course and/or teaching new content. (It is presumed that all instructors will have taken the most current Basic Instructor course, as required by TCOLE).
- After reviewing content, instructors should make any changes and updates necessary to material to be presented (minimum: lesson plans, slides, handouts) based on legislative or research updates. It becomes obvious when instructors use the same Power Point slides, same handouts, same exam questions that have been used and re-used for years. At minimum, even when no legislative or research updates are warranted, instructors should update handouts, slides, video clips to stay current and relevant.
- All instructors should be informed that they will be observed by a peer, and should be shown the evaluation form to be aware of expectations in their teaching in their overall performance review.

Threats

Threats in the context of SWOT analysis refer to elements in the environment that could cause issues for the organization. The elements briefly described below can impede the APD Training Academy's strategic goals. These and others should be considered more thoroughly, but are briefly mentioned here.

- Sociopolitical climate/Political unrest
- Negative police-community relations
- Shortage of recruits
- Economic/Financial/Budgetary constraints
- Internal morale
- Internal discord
- Negative perceptions by public/media
- Lack of real or perceived support

Strategic Plan

Taking all information into consideration, while looking to the future to make the Austin Police Department Training Academy worthy of exemplary status, below is a proposed strategic plan outlined for consideration. Note that this is an initial draft of the plan that with assistance from APD leadership and approval from City Manager, would be fully developed to include a detailed timeline, short- and long-term goals, yearly objectives, action, and assessment plans.

2020 strategic plan

Austin Police Department Training Academy

MISSION

The Austin Police Department Training Academy promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships.

VISION

To build and educate the finest police officers in the nation.

Purpose

Our purpose is to meet the needs of our community by providing the highest quality education to future officers. Contemporary policing requires contemporary training which incorporates Adult Learning (andragogy[1]) teaching principles while maintaining and reinforcing the community-oriented police services model.

[1] *the method and practice of teaching adult learners;*

Need #1: transformation of academy to move away from paramilitary training model to education model
Need #2: address community issues around Diversity, Equity, and Inclusion (DEI) concerns in training
Need #3: ensure all resources are available for instructors to reach teaching excellence

A New Environment

Training academies across the country are facing challenges in adapting to changing sociocultural and educational environments. While APD continues to lead the way for other departments, the training academy must make the necessary cultural shifts towards an education model to reinforce solid learning theories, adapt innovative teaching and learning strategies, and meet the demands of the new generation of student cadet.

Goal #1: introduce a cultural/paradigm shift for academy moving forward to reflect new directions in police academy training
Goal #2: provide instructors with effective professional development opportunities, feedback, and accountability plan to reach teaching excellence and include outside academics/civilians as academy instructors for some courses
Goal #3: continually innovate and evaluate to ensure cadets receive best education possible, focusing on critical thinking and problem solving, and preparing them for the challenges of modern, community-based policing
Goal #4: using the community-policing model, prepare cadets to communicate effectively, collaborate with community members, and embrace diverse perspectives when serving the Austin community

Investing in Our Future

While APD is not exempt from negative economic trends in the environment, one thing is certain: the long-term return on investing in the education of our future police officers is huge. By providing the necessary resources, instructors receive top notch professional development, cadets receive the best education resulting in long-term retention of important information, and the community benefits as a result.

Goal #1: increase budget to include upgrades in technology and training
Goal #2: increase investment in professional development programming to include pedagogical[2]/teaching resources
Goal #3: invest in Diversity, Equity, and Inclusion programming throughout curriculum

[2] *the method and practice of teaching, especially as an academic subject or theoretical*

Key Strategic Priorities

The four key themes identified in this Strategic Plan will guide our work for the next several years. These themes were generated inductively, based on operational observations, review of various bodies of literature, and the agility required by modern times to reach our objectives around educating the hearts and minds of future officers.

Cultural shift | Commitment to Diversity, Equity, & Inclusion | Academic Excellence | Resource Development

Strategic Initiatives

Drilling down, these initiatives will allow us to stay focused on the priorities that will guide our work.

- Transform para-military structure to Education/Adult Learning Model
- Emphasize Servant leadership & Guardian Model
- Clear & consistent communication/expectations
- Community-based curriculum
- Emphasize skills in Cognitive, Emotional, & Social areas
- Prioritize wellness throughout the curriculum
- Modern-day Policing

- Cultural competence assessments & development
- Incorporate implicit bias evaluations into recruitment process
- Infuse DEI programming throughout academy to include training for leadership
- Increase diversity in teaching faculty
- Implement recommended changes in teaching methods
- Implement recommended changes to course content
- Include simulations and role plays that pertain to difficult cultural or racial situations

- Review and revise Instructor position description evaluation
- Establish consistent onboarding process
- Regular class observations
- Set expectations and provide teaching resources, then hold accountable
- Reward excellence: either monetary and/or awards and recognitions
- Provide instructors time to develop courses
- Professional Development opportunities
- Partnership with local colleges/universities Teaching & Learning Excellence programs (attendance at yearly teaching symposium and access to resources)
- Civilianize some instructor positons for specific courses that require expertise in field

- Higher pay for prior education and incentive pay for instructors
- Establish instructor wellness program
- Prioritize tech upgrades to include LMS, Scheduling software, internal academy site
- Manage teaching load and establish equitable process of work distribution
- Select and train stellar Field Training Officers (FTO) to set good examples
- Improve cohesiveness between academy and FTO to ensure consistency in training
- Establish a Community placement opportunity for cadets to begin building relationships with community

References

Birzer, M.L. (2003). The theory of andragogy applied to police training. *International Journal of Police Strategic Management*, vol. 26.

Birzer, M.L. & Tanneill, R. (2001). A more effective training approach for contemporary policing. *Police Quarterly*, vol. 4 (2).

Birzer, M.L. & Tanneill, R. (2004). Andragogy: Student centered classrooms in criminal justice programs. *Journal of Criminal Justice Education*, vol. 15 (2).

Blumberg, X., Schlosser, X., Papazoglou, X., Creighton, X., & Kay, X. (2019). New directions in police academy training: A call to action. *International Journal of Environmental Research and Public Health*, vol. 16 (4941).

Chan, Devery, & Doran (2003). Fair cop: Learning the art of policing. *University of Toronto Press*.

Chappell & Lanza-Kaduce, (2010). Police Academy Socialization: Understanding the Lessons Learned in a Paramilitary-Bureaucratic Organization. *Journal of Contemporary Ethnography*.

Conti, (2011). Weak links and warrior hearts: A framework for judging self and others in police training. *Police Practice & Research*, vol. 12 (5).

Kringen, A.L. (2019). Females and the police academy. *The Encyclopedia of Women and Crime*.

Kringen, A.L. & Novich, M. (2017). Is it 'just hair' or is it 'everything'? Embodiment and gender repression in policing. *Gender, Work & Organization*, vol. 25 (2).

McGinley, B., Agnew-Pauley, W., Tompson, L., & Belur, J. (2019). Police recruit training programmes: A systematic map of research literature. *Policing*, vol. 0 (0), pp. 1 24.

Perez McCluskey, C. & McCluskey, J.D. (2008). Diversity in Policing: Latino representation in law enforcement. *Journal of Ethnicity in Criminal Justice*, vol. 2 (3).

Sanburn, J. (2016). The woman who is restoring order to law. *Time*, October, 13, 2016.

Schlosser, M.D. (2013). Training adults to become police officers at the University of Illinois Police Training Institute. *Law Enforcement Executive Forum*.

Schuck, A.M. (2016). Citizen complaints and gender diversity in police organisations. *Policing and Society: An International Journal of Research and Policy*, vol. 26 (8).

Schuck, A.M. (2017). Female officers and community policing: Examining the connection between gender diversity and organizational change. *Women & Criminal Justice*, vol. 27 (5).

Silvestri, M. (2019). In search of diversity: An embodied account of police leadership. *Police Leadership* (pp. 99-120).

Stoughton, S. (2015). Law enforcement's "warrior" problem. *Harvard Law Review*, vol. 128.

Todak, N. (2018). Investigating perceptions of race and ethnic diversity among prospective police officers. *Police Practice and Research: An International Journal*, vol. 19 (5).

COMPLAINT
EXHIBIT B

MEMORANDUM

TO: Mayor and City Council

FROM: Brion Oaks, Chief Equity Officer

THRU: Nuria Rivera-Vandermyde, Deputy City Manager

DATE: December 29, 2020

SUBJECT: Equity assessment SWOT analyses and report on racial inequities within Austin Police Department

The purpose of this memo is to provide a brief overview of two bodies of work documenting racial inequities within the Austin Police Department (APD). The first body of work contains a series of evaluations of seven division-level equity assessment responses and the Strengths, Weaknesses, Opportunities, and Threats (SWOT) identified by a third-party evaluator, The Peace Mill Research and Communications.

The second body of work is a report prepared by Joyce James Consulting to help identify racial inequities within APD and develop immediate and prolonged strategies to eliminate them. Key components of the scope of work addressed by this report include a documentation review relevant to APD and racial disparities; survey of the APD climate and culture including selected interviews; facilitation of the Groundwater Analysis® training and debrief for APD leadership; and collaboration with APD and the Equity Office to develop strategies and objectives based on the findings.

Background

In an effort to address racial inequity in Austin, City Council passed Resolution No. 20150507-027 in May 2015, which directed the City Manager to evaluate the impact of existing City policies and practices on racial equity and develop an Equity Assessment Tool to be used across City departments. The four sections of the Tool are designed to evaluate: Department Culture, Community Engagement, Budget, and Alignment with the Strategic Direction 2023. After a third-party evaluator develops a SWOT analysis based on responses to the Tool, the department reconvenes to develop an action plan with three to four interventions that they can implement within a year. It is designed to be a process of continuous improvement, with departments revisiting the Tool and developing new action plans every cycle.

In 2018, City Manager Spencer Cronk supported the expansion of departmental equity assessments and mandated that all City departments complete the process. The second equity assessment cohort included the Austin Police Department, an immense organization with 2,646 employees divided among 48 divisions. Due to the department's size and input from the community, the Equity Office determined that it would benefit the process, the community and the Police Department to directly engage community members and APD employees in a series of dialogues over several months as part of APD's equity assessment process.

In 2019, the Equity Office began engaging in this process with seven (7) divisions within the Austin Police Department. The divisions included in this pilot series were Training, Recruiting, Data Planning, Internal Affairs, Finance, Human Resources, and Victim Services.

After the equity assessment process, APD leadership identified the need for an additional process to dive deeper into the culture of the Department, as well as support identifying potential solutions to address equity concerns. After consultation with the Equity Office, APD identified Joyce James Consulting, who worked in collaboration with the Office to draft and plan a broader cultural assessment and intervention process.

Overview of Equity Assessment Process and SWOTs

As part of the City's equity assessment process, APD staff and officers, community leaders, and Austin residents gathered together for a series of dialogues in 2019, during which community members could engage directly with APD representatives. The discussions centered around each division's responses to the Equity Assessment Tool and were designed to add a level of community accountability to the equity assessment process.

Representatives from each division responded to community members' questions, which were generated in response to answers from APD's equity assessment. After division representatives answered initial questions, community members and APD engaged in dialogue to clarify answers, seek and provide further information, and address community concerns related to each division's responses.

The third-party evaluator analyzed the process to identify promising practices and areas for improvement, interviewed participants from APD and the community, and analyzed all departmental responses through a SWOT analysis.

Some notable findings include:

- Erosion of community trust
- Practices and procedures that contribute to a culture of fear
- Incomplete data collection and analysis
- Failure to codify equity standards
- Lack of institutional and individual understanding among leadership with regard to principles of equity and inclusion

Overview of Report on Racial Inequities and Institutional Racism
The report produced by Joyce James Consulting (JJC) provides key findings, recommendations and responses to the JJC team's review of multiple reports related to racial inequities that exist in the culture of APD, and the impact on internal and external stakeholders. The findings informed the recommendations and beginning road map, that if implemented, have implications for beginning a journey towards creating an APD anti-racist institutional culture.

Some of the recommendations include:

- Develop an understanding of the history of institutionalized racism and its impact on poor communities and communities of color.
- Utilize training defined by anti-racist principles and embed that in cadet academy and leadership development.
- Create a clearly defined roadmap with appropriate metrics, benchmarks, and milestones that define and gauge progress towards antiracism.
- Demonstrate transparency in regularly communicating with internal and external stakeholders.

Next Steps
The Equity Office staff will follow up with APD division leads in January and February to discuss the next steps of the equity assessment process which includes developing an equity action plan with specific interventions to address areas featured in the SWOTs.

If you have any questions, please contact Brion Oaks, Chief Equity Officer, at Brion.Oaks@austintexas.gov or 512-974-7979.

Attachments: Community + APD Equity Assessment Series: Austin Police Department
Training and Recruiting Division
Data Planning Division
Internal Affairs and Professional Standards Division
Finance Division
Human Resources Division
Victim Services Division
Community Engagement Process Evaluation and Recommendations
Racial Inequities and Institutional Racism: A Report Submitted to The City of Austin Equity Office and The Austin Police Department

cc: Spencer Cronk, City Manager
Rey Arellano, Assistant City Manager
Christopher Shorter, Assistant City Manager
Brian Manley, Chief, Austin Police Department
Troy Gay, Assistant Chief, Austin Police Department
Farah Muscadin, Director, Office of Police Oversight
Devin Desai, Chief Labor Relations Officer, Labor Relations Office
Lee Crawford, Division Chief, Law Department

Community + APD Equity Assessment Series:

Austin Police Department, Training and Recruiting Divisions

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Executive Summary**
4	**Research Methods**
5	**Background: Equity Office and Equity Assessment Tool**
7	**Analysis of APD Data on Training Academy Outcomes**
10	**Data Visualizations: APD Graduating Classes by Race and Gender**
13	**Community Concerns and Response to Equity Assessment Results**
13	**Lack of Commitment to Equity Principles and Equity Analysis Process**
14	**Training Materials Create Significant Community Concerns**
14	**Qualitative Interview Findings: Dangerous, Inequitable Practices at APD Academy**
15	**Evidence Supporting the Redesign of APD Training Academy and Training Division**
18	**Recommendation: Redesign and Rebuild APD Training Academy and Training Division**
20	**SWOT Analysis: Training Division Equity Assessment Responses**
24	**SWOT Analysis: Recruiting Division Equity Assessment Responses**
29	**Community Response: Recruiting Division Assessment Responses**
30	**Conclusion, Context, and Insights**
32	**Appendix 1: APD Injury Data**
33	**About the Researcher**

Executive Summary

This report assesses the standards and practices related to diversity, equity, and inclusion at the Austin Police Department Training and Recruiting divisions. In 2015, the City Council directed the City Manager to begin a process that evaluates the impact of City policies, projects, and initiatives on racial equity in Austin.[1] As part of the equity assessment process, an independent researcher is tasked with assessing the departments, responses, collecting supplemental data, conducting interviews, and providing an extensive analysis of each department and division's equity practices to inform any subsequent equity action plans and support the department as it seeks to strengthen its equity practices and standards.

During this assessment, an independent researcher reviewed the APD Training division's self-assessment responses; conducted qualitative interviews with APD division leaders, former training academy cadets, community leaders, and Austin residents; analyzed APD Training division data, including information on recruitment, graduation rates, and injuries; and provided an analysis of the divisions' strengths, weaknesses, opportunities, and threats (SWOT analysis) related to diversity, equity, and inclusion.

This assessment found significant racial and gender disparities in the standards and practices of APD's Training and Recruiting divisions. The Training division's leadership failed to produce any measurable standards for ensuring equitable practices. The division's self-assessment identified one Black employee out of 57. Data provided by APD highlighted further disparities in graduation rates, with 81.6% of white male cadets graduating the academy compared to 48.5% of Black male cadets. Over five years, Black cadets accounted for only 5.19% of all academy graduates and were more likely to leave the academy or sustain an injury than any other racial group. All racial groups, other than white cadets, were underrepresented in graduating cadet classes. While the Recruiting division has taken the recent step of hiring a staff member to address racial disparities in the recruiting process, the number of Black, Latinx, and women cadets recruited into APD's cadet remains glaringly low. The number of cadets from these communities who graduate from the academy is even lower. This holds true for every racial group except for white cadets.

[1] Austin City Council Resolution 20150507-027

Interviews with former cadets revealed an academy culture that prioritizes physical aggression above all else. Multiple cadets stated that training staff subjected them to hours of grueling physical and psychological stress drills, refusing water to dehydrated cadets and engaging in other dangerous practices. This assessment details those practices and provides a complete analysis of APD Training division data. This report recommends that City leaders suspend all cadet classes until APD leadership and Equity Office officials can develop and implement an equity-driven action plan that reforms and rebuilds APD's Training division, including the training academy.

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third-party independent researcher to analyze responses submitted by each APD division during the equity assessment process and make recommendations for strengthening diversity, equity, and inclusion commitments within the department. The researcher employed a series of methods for collecting and analyzing data for this report, including:

- desk research, including the following:
    - reviewing the division's Equity Assessment Tool self-assessment responses
    - equity-related data related to the division's practices, such as race and gender data
    - additional data and evidence as needed and available
- qualitative interviews with a collection of stakeholders, including:
    - APD division leaders
    - Community leaders and residents
    - Former APD academy cadets
- quantitative analysis of APD data on cadet classes

The researcher used these methods to conduct an analysis of diversity, equity, and inclusion (DEI) standards and practices within APD's training division. This report contains those analyses, including an analysis of the division's strengths, weaknesses, opportunities, and threats (SWOT analysis) regarding diversity, equity, and inclusion. The report concludes with a recommendation section and commentary that addresses the training division within the context of broader reform efforts and current events related to policing and DEI reforms.

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[2] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity

[2] Austin City Council Resolution 20150507-027

Assessment Tool with “Starred Commitment” status, indicating a significant advance in open government principles and a measurable step toward implementing those principles.

Analysis of APD Data on Training Academy Outcomes

In response to a request from the researcher conducting this assessment, the Austin Police Department provided data on a series of outcomes and other variables of interest related to the APD training academy between 2015 and 2020, including:

- Demographic data on APD cadet classes
- Graduation rates of cadets
- Reasons for voluntary or involuntary termination
- Comprehensive data on injuries sustained by cadets during training

Equity Limitations of APD Demographic Data Collection Methods

For the purposes of conducting an equity assessment, it is encouraging when any public institution collects demographic data. The APD data is helpful for some analysis, but it should be noted that there are several limitations caused by the format of the demographic data that APD collects:

1. Binary gender: APD's intake forms for cadets only allow a binary male/female option. This is an outdated approach to collecting gender data that discriminates against individuals who are non-binary, transgender, gender fluid, or who do not otherwise identify as male or female.

2. Limited categories for race: APD's intake forms allow cadets to identify as one of four races/ethnicities: White, Black, Hispanic, or Asian. This is an incredibly limited and outdated format for collecting race/ethnicity data that omits and discriminates against individuals who identify as Indigenous, Middle Eastern/North African, Latina/Latino (different than Hispanic), bi-racial or multiracial, or who otherwise identify as a race or ethnicity other than the four options provided on APD's intake forms.

Assessment of Data on Graduation Rates

Between 2015 and 2020, at least 638 cadets were recruited into APD's training academy. Of those 638 cadets, 464 (72.73%) graduated from the academy.[3] Due to errors in the demographic data provided by APD to the researcher conducting this analysis, data from the 38th cadet class was omitted from some of the demographic analysis in this study (see footnote 2). The sample used for this analysis of graduation rates includes twelve complete cadet classes, including 443 graduating cadets. Of the 443 cadets who graduated from the academy and were included in this equity analysis, 309 (69.75%) were white, 92 (20.77%) were Hispanic, 23 (5.19%) were Black, and 19 (4.29%) were Asian. Of a sample of 148 cadets who did not graduate and left the academy either voluntarily or involuntarily, 89 (60.14%) were white, 31 (20.95%) were Hispanic, 22 (14.86%) were Black, and 6 (4.05%) were Asian. The overall graduation rate for APD training academy cadet classes between 2015 and 2020 was 77%. However, when disaggregated by race and gender, the graduation rates highlight yet another significant inequity in APD's training division. During the same period, the graduation rates for APD cadets, disaggregated by race and gender, were as follows:

Figure 1. APD Training Academy Average Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[4]

Source: APD Data provided upon request by the researcher

[3] APD provided graduation data from 2015-2020, from the 130th through the 142nd cadet classes. Errors were discovered in the data for the 138th cadet class, so that data has been omitted from the demographic sections of this analysis. The class size was small and the omitted numbers do not shift the overall quantitative findings of this report. When updated data is provided by APD, this report will be updated to reflect those numbers.

[4] Over five years, APD only recruited one Asian woman, who successfully completed the academy.

APD's data on its cadet classes illustrates an all-too-common occurrence among municipal police agencies across the US: their ranks do not reflect the makeup of the community they are sworn to serve and protect. According to the U.S. Census Bureau population estimates for 2019, Austin is a "majority minority" city.[5] 48.3% of Austin's residents are white (non-Hispanic). 34.3% are Hispanic, 7.8% are Black, and 7.3% are Asian. Although APD does not provide more than four racial categories in its data, the census also identifies 0.6% of Austin's population as American Indian and Alaskan Native and 3.3% as two or more races. This data shows that the racial demographics of APD's graduating classes differ starkly from the demographic makeup of Austin as a city.

Assessment of Data on Injuries Sustained by APD Cadets

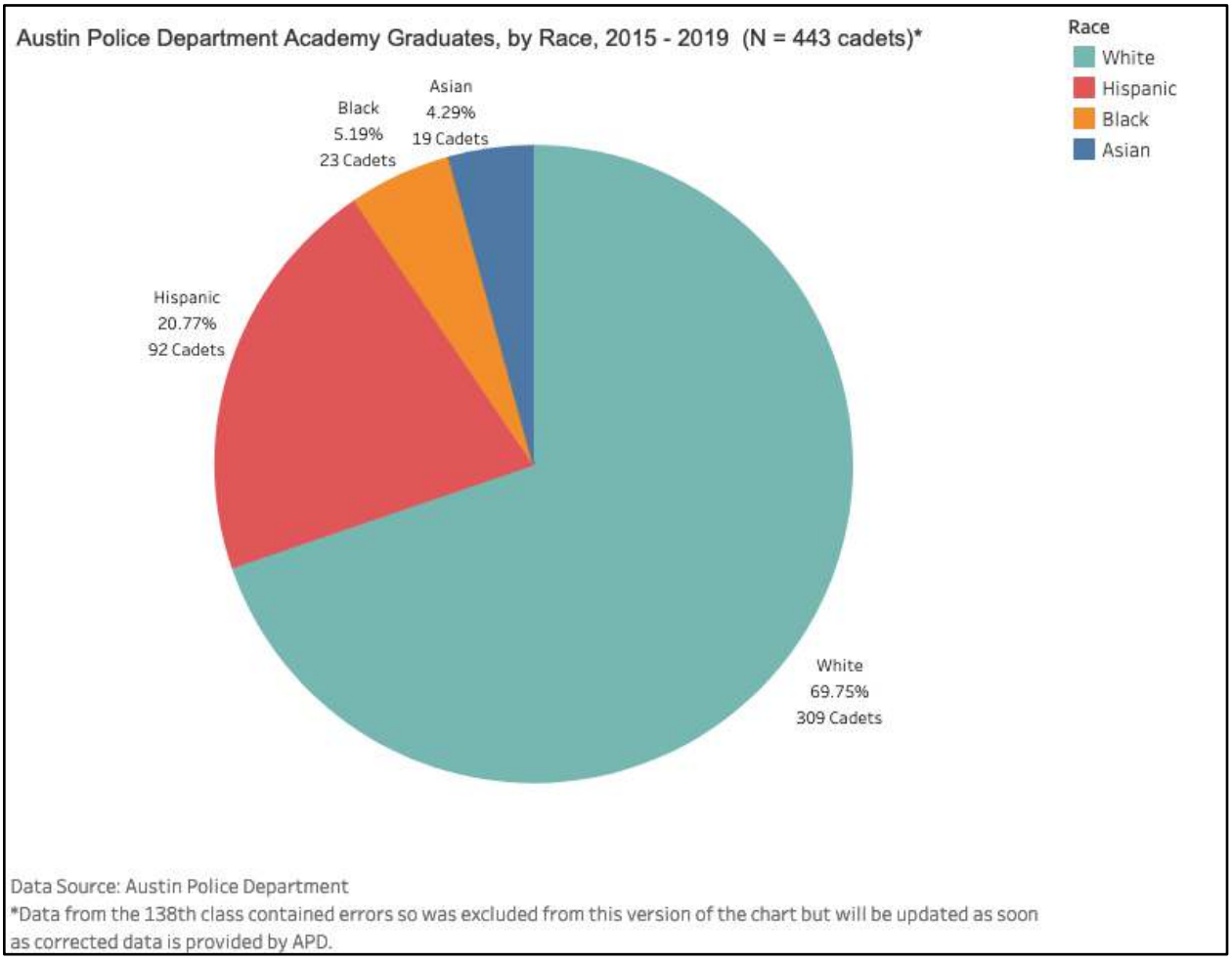
According to data provided by APD, at least 509 injuries occurred during the APD training academy between 2015 and 2020. Of the cadets who were injured and included in this data, 348 (68.37%) were white, 85 (16.7%) were Hispanic, 57 (11.2%) were Black, and 19 (3.73%) were Asian. While the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%). APD's data illustrates inequitable outcomes for Black cadets who enroll in the APD training academy. Black cadets in APD's training academy are underrepresented when compared to the population of Austin, less likely than their peers to graduate from the academy, and more likely to be injured during APD's training academy than any other race.

[5] While the term "majority-minority" is itself problematic, we employ it here to illustrate that even by an inaccurate and inequitable census bureau's standards, APD's graduating classes do not reflect the city's population; US Census Bureau 2019 population estimates for Austin can be found at https://www.census.gov/quickfacts/fact/table/au.stincitytexas/LND110210.

Data Visualizations: APD Graduating Classes by Race and Gender

The following data visualizations illustrate the race and gender of APD's academy graduates. The data used to construct these visualizations was provided by APD's Chief Data Officer and contain cadet data for from 2015 to 2020. The data includes the 130th through 142nd APD cadet classes.[6]

Figure 2. APD Academy Graduates by Race



[6] Errors were discovered in the data from the 138th cadet class. Therefore, that class was omitted from these visualizations. The 138th cadet class was relatively small, and the omission of that data does not alter the quantitative findings of this analysis. The report will be updated when the corrected data is received from APD.

Figure 3. APD Academy Graduates by Race, 2015 - 2020 (Men)

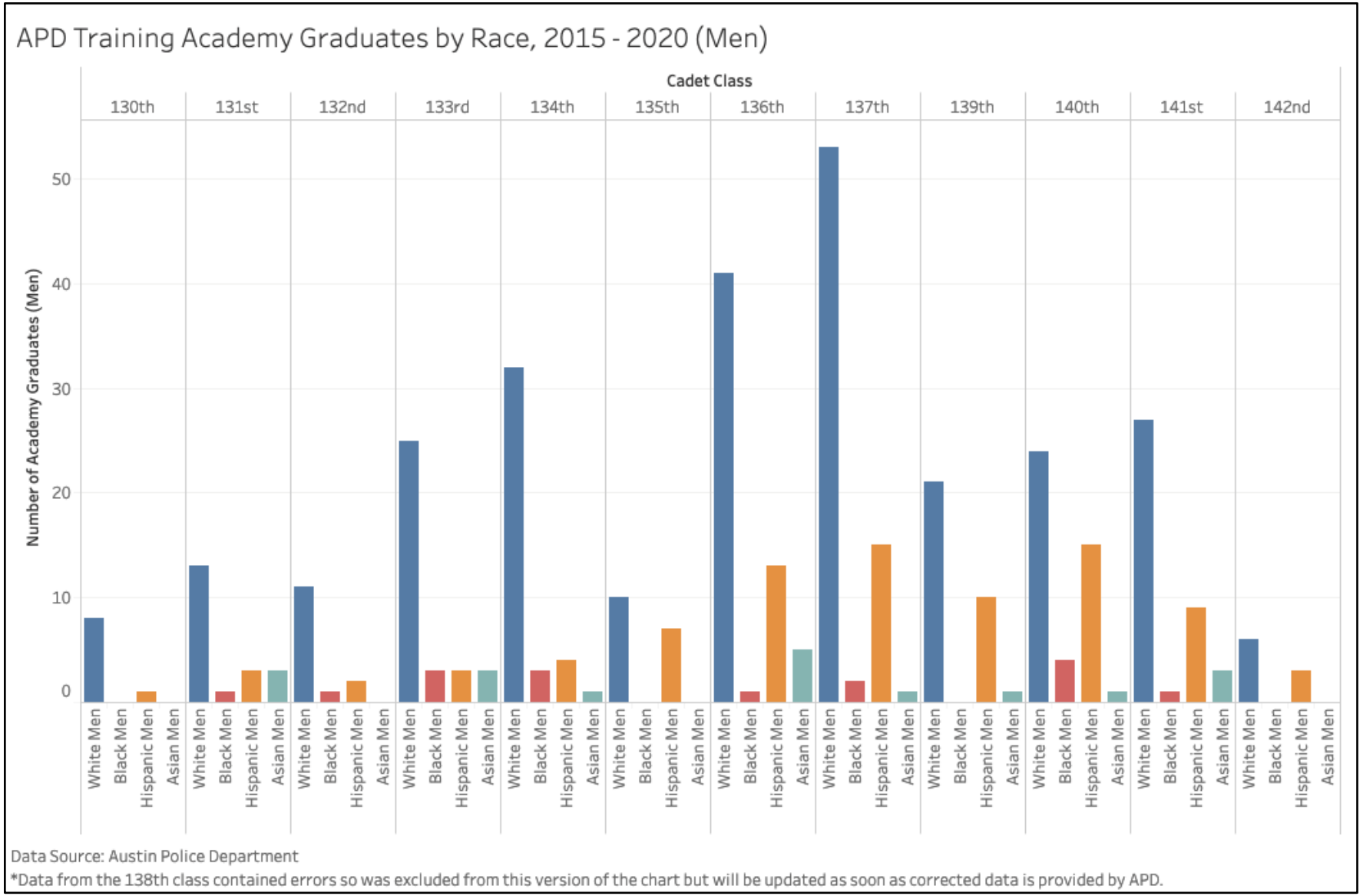
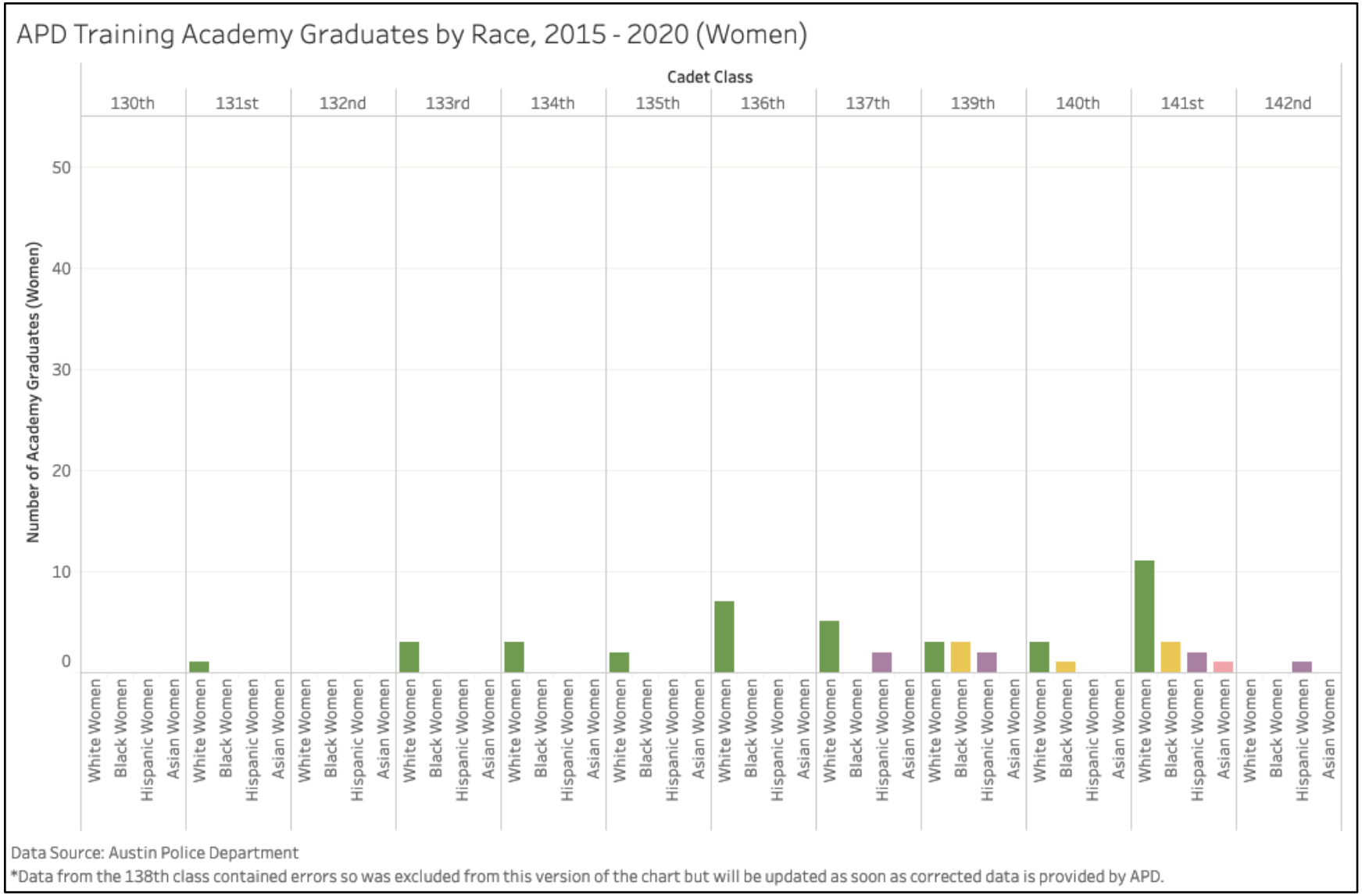


Figure 4. APD Academy Graduates by Race, 2015 - 2020 (Women)



Community Concerns and Response to APD Equity Assessment Results

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During interviews, community members expressed disappointment with the Training division's equity assessment responses. Community members cited many concerns, including the division's general lack of commitment to equity principles, lack of specific goals for improving equitable outcomes and inability to account for underrepresentation of women and communities of color among graduating cadet classes. Community members expressed frustration at de-escalation training materials that included language and images that were insensitive to women and communities of color and inaccurate depictions of the public as increasingly hostile and generally disobedient. Community members expressed overwhelming support for urgent reforms to APD's training standards, as well as department-wide reforms and renewed commitments around equity, diversity, and inclusion.

Lack of Commitment to Equity Principles and Equity Analysis Process

In many interviews with community members who participated in the C+APD meetings, participants expressed frustration at what they perceived as a lack of commitment to equity principles and the equity analysis process in general. Community members perceived APD's training division representatives as defensive when asked questions about race and gender demographics of cadets. Community members perceived the body language, behavior, and responses of training division representatives as defensive as well. These concerns were shared by other APD representatives present at C+APD meetings, who acknowledged in evaluation interviews that some of their APD colleagues were unnecessarily defensive and resistant to community questions about training procedures and materials and equity standards.

Training Materials Create Significant Community Concerns

Community members raised additional concerns at the depiction of an increasingly hostile and aggressive public in APD training materials. Community members expressed concern that this message will only make officers more violent and aggressive when they interact with the community. The APD training curriculum received significant criticism from community members, who expressed outrage at certain segments in APD's de-escalation training videos that were incredibly offensive to Black women.

Qualitative Interview Findings: Dangerous, Inequitable Practices at APD Academy

During interviews conducted as part of this assessment, multiple cadets alleged that the APD training academy fosters a dangerous and ineffective learning environment that discourages, degrades and injures highly qualified candidates, many of whom decide to resign for fear of permanent physical or mental injury. According to multiple former cadets who attended recent academies, cadets are subjected to counterproductive and excessive bouts of physical punishment in the form of "smoking sessions."[7] Multiple former cadets explained in separate, individual interviews that the academy's educational elements and academic presentations are regularly interrupted by unscheduled psychological stress drills, making it difficult to absorb important intellectual material and creating an unstable, stressful academic environment.

Multiple former cadets expressed concerns that training division staff foster a culture of violence, embracing brutality over wisdom throughout the academy experience.[8] Multiple cadets expressed concern about training staff promoting rhetoric that is antagonistic toward individuals

[7] Former cadets described "smoking sessions" as extended physical endurance drills that are separate for planned physical exercises. According to multiple interviews, these sessions are unscheduled and designed purely as punishment for a variety of offenses. Multiple former cadets explained that they often were unsure of the cause of each smoking session, but that training staff indicated that the sessions were the result of some individual or collective error.

[8] The term *culture of violence* describes institutionally imposed conditions that "can be used to justify or legitimize direct or structural violence" (Johan Galtung, "Cultural Violence," *Journal of Peace Research*, August 1990). In multiple interviews, cadets confirmed the narrative that an APD trainer asked a new cadet why they wanted to be a police officer, interrupting the cadet's response by saying "If you tell me you want to help people, I will punch you in the face." Combined with other incidents, including deprivation of water by trainers during physical drills in the summer heat, and other comments from training staff identified during interviews, the qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied.

experiencing homelessness.[9] The academy's training staff employ dangerous training tactics that have been described by cadets with military backgrounds as "worse than anything I went through in [US military training]." Multiple former cadets allege that the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation. The Training division's practices and culture are driving highly qualified candidates to leave the academy, depriving Austin of the diverse, community-driven police force that City leaders and residents envision.

Amid numerous valid concerns over secretive testing practices, unsafe physical tests that violate APD's own policies, racist and sexist language by instructors, physical abuse by instructors, forced resignations, suspicious injuries, inequitable employment outcomes, and an increasingly toxic training culture driven by a militarized "us versus them" mindset, City and APD leaders should rebuild the training academy and implement sweeping structural reforms to the training division. To honor the City and APD's commitment to a safer Austin for all Austinites, these reforms should include measurable changes to the culture, curriculum, staffing and leadership in APD's Training division.

Evidence Supporting the Redesign of APD Training Academy and Training Division

As part of the ongoing equity assessment mandated by Austin's community leaders, the City Manager and City Council, each division at APD conducted a self-assessment and submitted responses via the City of Austin Equity Assessment Tool. APD's own responses illustrate a training division devoid of equity standards. At the time of the self-assessment, APD's training division reported that one (1) of its 72 employees is Black. 70% of the division's employees were white. Further, the training division's self-assessment did not identify any codified standards for ensuring equitable hiring practices or decision-making processes.

During this ongoing independent evaluation of APD's Training division, the researcher has conducted interviews with many former APD academy cadets. These individuals provided a unique perspective on APD's training methodology and narrated corresponding accounts of

[9] Multiple former cadets in separate, individual interviews confirmed that training staff made negative comments toward individuals experiencing homelessness and told cadets that if they are "having a slow day," they could seek out someone experiencing homelessness as an easy target for various citations.

deeply troubling incidents that deserve a transparent and thorough investigation. These allegations and supporting evidence raise concerns that the APD Training division, operating without civilian oversight, is undermining the stated equity goals of the police department, and trainers in the academy are using violent tactics to target and expel the very candidates that the department desires in its ranks. Recent reports from sources including the Office of Police Oversight and APD's own internal investigator offer even further evidence that there are serious gaps in the department's attempts to address racism and inequity in policing.

The researcher requested APD data through the Equity Office and other City intermediaries on cadet injuries, including the number of injuries sustained during cadet classes, whether those injured cadets resigned or graduated, the type of injury sustained, and the race and gender demographic information for injured candidates. In its own self-assessment, APD's Training division listed race and gender among the demographic data collected on cadets, providing a racial breakdown of current cadet and sworn officer personnel. APD provided the data requested, and an analysis of that information is detailed in a separate section of this report titled "Analysis of APD Data on Training Academy Outcomes."

According to interview respondents, many of the academy's trainers rely overwhelmingly on "violent", "brutal", "traumatizing" practices designed to "manufacture soldiers" rather than produce community-driven law enforcement professionals adept at de-escalation. Trainers place cadets in dangerous, demoralizing, and inhumane exercises with "zero regard for the health and safety of cadets." Multiple cadets stated that they and their colleagues had been screamed at or punished for checking on one another or drinking water during intense physical drills, which last for hours in sweltering summer heat. Multiple cadets confirmed that they were deprived of water during extended physical drills in extreme heat. Data provided by APD confirms that a troubling number of cadets were treated for heat exhaustion and dehydration during the academy. Multiple cadets expressed that even though they hydrated heavily at home, as advised by APD training staff during orientation, it was impossible to avoid dehydration when training staff refused to allow them water during these extended physical drills. Cadets could not identify a plausible real-world scenario during which they would be deprived of access to water in extreme heat for extended periods of time. Multiple cadets expressed that this deprivation was rooted in nothing

more than cruelty and had no basis in the reality faced by police officers. Some narratives, corroborated by multiple respondents, are simply too violent to understand how they were ever allowed to occur, including many cadets being forced to resign or risk serious injury in the face of seemingly endless "hazing" and "abuse." The descriptions provided during interviews of injuries caused by APD trainers are equally disturbing. Allegations of anti-homeless, racist, and sexist remarks and other forms of targeted harassment toward cadets and others should not be ignored and deserve further investigation.

Recommendation: Reform and Rebuild APD Training Academy and Training Division

City and APD leaders should work together with community leaders to reimagine, redesign and rebuild the APD Training Academy and Training Division. APD is simply not graduating diverse cadet classes. Further, interviews conducted as part of this research and recent media coverage point to a pattern of dangerous practices during cadet classes. Multiple interview respondents pointed to *smoking sessions*, which are unscripted, unscheduled physical and psychological stress drills that instructors instigate without notice. According to multiple interviews, these *smoking sessions* are often used as collective punishment for individual violations, though their use is just as frequently unexplainable. Some respondents indicated that Training division staff seemed to enjoy putting cadets through the stress drills, which often go on for hours during the summer heat. Multiple respondents claimed that cadets are refused water during these stress drills, that instructors punish cadets for looking at one another (even if checking the condition of fellow cadets), and that medical staff are not posted close enough to the cadets to assess symptoms of dehydration or heat stroke. Multiple respondents witnessed instructors refuse water and fail to render aid to cadets who were visibly suffering symptoms of dehydration. It is well-documented that these practices resulted in multiple serious injuries to cadets.

Until this culture of violence is no longer the driving force behind APD's training methodology, the department will not be able to deliver on its promises of equitable service provision to the residents of Austin. What benefit is it to eliminate brilliant candidates for the sake of maintaining a battlefield mindset? How much money is spent recruiting these bright, capable, highly-educated, successful and *diverse* candidates, bringing them through a months-long recruiting process, vetting them intensely, dedicating an unknown number of personnel hours to interviews and investigations -- only to have them driven out of the academy by a culture of brutality, militarism and violence? What benefit is it to subject highly-qualified, diverse, committed cadets to training that is more intense than some military training programs? The culture of the APD training academy, detailed firsthand by the courageous respondents who were interviewed for this research, conflicts directly with the department's recruiting and public relations campaigns, which proclaim a police department focused on diversity, equity and community engagement. APD's own data reveals repeated failures at achieving these goals.

Reforms to the training academy and training division should begin after the Equity Office's evaluation of the police department is complete and any subsequent action plans and reforms have been implemented with strong civilian oversight mechanisms. A recent series of equity assessment meetings between community leaders, residents, City officials and APD division representatives provided an uncommon and unorthodox opportunity for residents and APD leaders to engage with, educate, and learn from one another. The City and APD should use this model to reimagine, reform and rebuild APD's training division and training academy.

Departments, divisions, and actors that engage in discrimination and inequitable practices cannot be corrected or reformed simply by changing a script, adding a slideshow on diversity, or publishing a pamphlet with photos of Black employees on each page. Systemic change implies a full redesign and reconstruction of a failed system. Corresponding accounts by multiple cadets from multiple cadet classes indicate that any recent changes to APD's training curriculum have been, at best, superficial and that systemic flaws persist in the department's training protocols. Further interviews with APD division leaders from multiple divisions indicate that the department's commitment to the equity assessment process has been similarly superficial. Most division leaders received little guidance from APD leadership when engaging with the equity assessment. This means that division leaders, rather than department leaders, are conducting their division's equity analysis using disparate, ad hoc approaches. This renders the equity assessment process useless in divisions where leaders are not adequately equipped to address, or simply do not care about, racial or gender equity.

The City of Austin and APD made a commitment to foster a more diverse, equitable, safer Austin for all Austinites. Equity-focused reforms at the police department must be deep, cultural, universal, and backed with measurable indicators, public accountability mechanisms, and most importantly, community input. City and APD leaders should seize this opportunity to recommit to the principles of equity outlined in Council Resolution 66 and begin the important work of reimagining public safety by beginning where Austin's police officers are shaped: APD's training academy and the training division that administers it.

SWOT Analysis: APD Training Division Equity Assessment Responses

STRENGTHS	**WEAKNESSES**
Collects some demographic data on division staff Collects some demographic data on cadet classes	Lack of diversity among division staff Division does not analyze demographic data on contractors/consultants Division does not collect demographic data on racial disparities among client populations Division does not have strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for ensuring equitable practices
OPPORTUNITIES	**THREATS**
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of political will among APD leadership at many levels threatens meaningful change High-profile incidents resulting in civilian harm or death undermine community equity-driven reform efforts and further erode community trust in APD reform commitments Division training materials, including materials used in de-escalation trainings, contribute to culture of fear, mistrust between police officers and community members

Strengths

Collects some demographic data on division staff

Question 4:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response: These data are available through the Human Resources Department.
White (40) 70%
Black (1) 2%
Asian (4) 7%
Latino (12) 21%

2. Collects some demographic data on cadet classes

Question 9:
Provide the numerical breakdown (count) by race/ethnicity of the clients your department serves.

Division Response: HR does not keep race/ethnicity statistics for APD civilian employees other than cadets. The race/ethnic breakdown for sworn and cadets:
TOTAL = 1,901; White - 1,304; Black - 153; Hispanic - 393; Asian - 49; Native American – 2

Weaknesses

Lack of diversity among division staff

Question 4:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response: These data are available through the Human Resources Department.
White (40) 70%
Black (1) 2%
Asian (4) 7%
Latino (12) 21%

Division does not analyze demographic data on contractors/consultants

Question 5: Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response: These data are available through the Purchasing Department.

Does not collect demographic data on racial disparities among client populations

Question 11: Does your department collect data showing racial/ethnic disparities among the population you serve?

Division Response: No.

Division does not have strategies in place to ensure racial and thnic diversity of staff

Question 15: Does your department have strategies in place for ensuring racial/ethnic diversity of staff in recruitment and hiring processes?

Division Response: No.

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Question 20: How does your department measure the effectiveness of its training on equity and institutional racism?

Division Response: N/A

Does not provide any specific or measurable standards for ensuring equitable practices

Question 23: Does your department measure the effectiveness of its efforts to improve racial equity?

Division Response: No.

Opportunities

Development of concrete equity standards and assessment processes

Develop and implement training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaborate with Equity Office and Equity Action Team to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Lack of political will and/or commitment to principles of equity at any level of leadership can undermine the efforts of reformers within the department and partners in government and the community

High-profile incidents resulting in civilian harm or death undermine community equity-driven reform efforts and further erode community trust in APD reform commitments

Division training materials, including materials used in de-escalation trainings, contribute to culture of fear, mistrust between police officers and community members

SWOT Analysis: APD Recruiting Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Collects some demographic data on contractors and consultants Collects some demographic data on cadet classes Conducts some test monitoring during cadet testing to prevent observable biases Hired civilian recruitment coordinator whose tasks include monitoring racial and ethnic distribution of cadets	Incomplete demographic data collection: contractors, consultants Does not collect data on demographic disparities among served population Does not provide specific, measurable processes for ensuring racial/ethnic diversity of staff Does not provide division-specific training, orientation, or onboarding specific to critical race issues Does not provide division-specific equity training, does not collect data or perform assessments on impact of at-large trainings Does not provide any specific or measurable standards for ensuring equitable practices
OPPORTUNITIES	**THREATS**
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of political will among APD leadership at many levels threatens meaningful change Failure to codify equity standards and accountability mechanisms makes it difficult to measure progress over time External pressure from political actors weakens community trust in APD commitment to equity principles

Strengths

1. Collects demographic data on division staff (Q4)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response:
The Recruiting Unit currently has 27 employees (up to the rank of Commander). Whites make up 10 employees, African Americans make up 9 employees, and Hispanics make up 8 employees. This can be broken down further into 6 white males, 4 white females, 7 African American males, 2 African American females, 5 Hispanic males, and 3 Hispanic females.

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2. Collects some demographic data on contractors and consultants (Q5)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response:
Stats (actual count): Ethnicity Not Disclosed (89), White (68), Asian (7), Hispanic (4), African American (3), Native American (2). Total 173

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3. Collects demographic data on cadet classes (Q9)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the clients your department serves.

Division Response:
Data for the last two hiring cycles: 140th cycle count: American Indian - 5, Asian - 42, African American - 201, Hispanic - 536, White - 742, Other - 32. 141st cycle count: American Indian - 4, Asian - 34, African American - 91, Hispanic - 287, White - 405, Other - 24

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4. Conducts some test monitoring during cadet testing to prevent observable biases (Q22)

Question:
How does your department ensure departmental policies, practices, and programs do not adversely impact communities of color?

Division Response (excerpt):
During testing cycles, test scores of minority and women applicants are closely monitored to ensure that there is no evidence of adverse impact (4/5th's rule).

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5. Hired civilian recruitment coordinator whose tasks include monitoring racial and ethnic distribution of cadets (Q24)

Question:
Describe the methods of measurement used (e.g., surveys) and provide a few examples of measures you track (e.g., Increase outreach to X community by X%)

Division Response:
The Recruiting Unit is always striving to forward cadet classes to the academy that are reflective of Austin's diverse communities. We recently hired a civilian Recruitment Coordinator. Part of her job duties is to keep stats on the ethnic makeup of classes entering in the academy and look for any changes in the data. If any changes are noted, unit leadership looks into this further to see where we are losing minority applicants during the hiring process.

Weaknesses

1. Inconsistent demographic data collection for contractors and consultants (Q5)

Question: Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response: Stats (actual count): Ethnicity Not Disclosed (89), White (68), Asian (7), Hispanic (4), African American (3), Native American (2). Total 173

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2. Does not collect data on demographic disparities among served population (Q11, Q12)

Question: Does your department collect data showing racial/ethnic disparities among the population you serve?

Division Response: No, the Recruiting Unit does not.

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3. Does not provide specific, measurable process for ensuring racial/ethnic staff diversity (Q16)

Question: Provide those strategies, and if applicable, include the venues and organizations where outreach occurs.

Division Response: The Recruiting Unit is always striving to maintain a diverse workforce that reflects the ethnic make-up of APD as well as the citizens of Austin. As evidenced above, the unit is very diverse (almost 1/3 representation per ethnic group). All departmental officers, to include African American, Asian, and Hispanic officers, are encouraged to work with the unit on special assignments to learn about the inner workings of the unit and to participate in Phase 1 testing with the hope they will apply to the unit when a vacancy announcement is posted. Having a diverse workforce in the Recruiting Unit is very important as we work to increase the diversity within APD.

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4. Does not provide training, orientation, or onboarding specific to critical race issues (Q18)

Question: Does your department, on-board, orient, or train staff on critical issues related to equity and institutional racism?

Division Response: The Recruiting unit does not as a unit, but the department does offer various trainings on the topic through TCOLE mandated classes.

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5. Does not provide division-specific equity training, does not collect data or perform assessments on impact of trainings (Q20)

Question:
How does your department measure the effectiveness of its trainings on equity and institutional racism?

Division Response:
N/A

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6. Does not provide any specific or measurable standards for ensuring equitable practices (Q21)

Question: What are your department's greatest equity priorities? If they have not yet been formally established, take time now to think about and identify what equity priorities are most important to your department and include them here.

Division Response: The Recruiting unit strives to ensure that everyone who applies to be a police officer is treated fairly, professionally, impartially, and we are transparent with them throughout the hiring process. Members of the unit ensure that everyone who walks through our front door is treated the same. We are pulling for the applicants throughout the process and want everyone to succeed, as we need more officers on the streets to enhance community policing efforts.

Opportunities

1. Develop concrete equity standards and assessment processes.

2. Develop and implement training modules on critical race issues as part of recruiting, training, orientation and onboarding processes.

3. Collaborate with Equity Office and Equity Action Team to develop and implement specific accountability metrics for ensuring equitable practices.

Threats

1. Lack of political will and/or commitment to principles of equity at any level of leadership can undermine the efforts of reformers within the department and partners in government and the community.

2. Failure to codify equity standards and accountability mechanisms can make it difficult for internal and external evaluators to measure progress over time.

3. External pressure from political actors may threaten equity-driven initiatives and erode community trust in APD commitment to equity principles.

Community Response: Recruiting Division Equity Assessment Responses

The equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher. During interviews, community members expressed concerns over the Recruiting division's equity assessment responses. Community members cited a series of concerns, including the division's general lack of codified equity principles and lack of specific goals for improving equitable outcomes. Community members expressed overwhelming support for urgent reforms to APD's recruiting standards, as well as department-wide reforms and renewed commitments around equity, diversity and inclusion.

Conclusion, Context, and Insights

This report analyzes the responses provided by APD's Training and Recruiting Divisions to the City of Austin's Equity Assessment Tool and supporting evidence to evaluate each division's commitment to principles of equity. APD's Training Division does substantially less than most Austin divisions to advance the principles of equity. In fact, it is hard to identify any meaningful, measurable commitments to equitable outcomes when assessing the division's responses. The division's staff is not diverse and there are no specific or measurable standards for ensuring equitable practices in day-to-day operations. The academy continues to graduate cadet classes that do not reflect the communities most heavily policed by APD. Graduation rates for Black candidates are consistently lower than those of their white counterparts. Every racial group in Austin is underrepresented in APD's graduating cadet classes, except for white cadets, who are overrepresented when compared to the city's demographic makeup.

The lack of equity standards in the APD training division raises serious concerns that must be addressed by Austin city leaders, in consultations with community leaders, before commencing any new cadet classes. This is especially true considering the events that have unfolded in Austin this year, from the death of Mike Ramos to ongoing protests.

It is impossible to deliver this report without reflecting on the events taking place right now in cities across the United States, including Austin, in response to ongoing, systemic inequities and violence against Black, brown and poor communities by police forces; violations of international human rights standards by police forces; and the rapid militarization of local police forces. It is also essential that all parties reflect on the escalating police and military response to those demonstrations. Our communities, their governments, and their police agencies are at an important, historic decision point.

How can a community place trust in the commitments of APD leaders to *de-escalatory, anti-racist* training policies when its riot control officers are shooting unarmed Black demonstrators in the face at short range with rubber bullets and launching CS gas into crowds that include children and pregnant women? How does the community trust the commitment of police leadership to *de-escalatory, anti-racist* training policies when another unarmed Black man is

fatally shot by its officers in broad daylight in front of an exhausted community? How can community members build trust with police leaders who choose to leave as a unit during lunch at anti-racism workshops rather than break bread with the community members who have given their time freely to do the tremendous work of undoing systemic racism? Why does APD continually fail to graduate diverse cadet classes? These crucial questions arose from the community during interviews and conversations throughout this evaluation. Their honest criticisms provide critical citizen perspectives and a starting point for city leaders committed to building a more just and equitable Austin.

Appendix 1: APD Injury Data

Figure 5. APD Training Academy Injuries, 2015 - 2020

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	0
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	0
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	0
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	0
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	1
TOTALS:	**90**	**123**	**77**	**116**	**98**	**5**

Source: APD Data provided to the researcher by request

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Austin Police Department, Data Planning Division

Research and analysis provided by the Peace Mill

December 28, 2020



Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
4	**Community Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Develop and Implement Departmental Strategies and Requirements for Ensuring Equitable Outcomes in Hiring, Project Management, and Data Provision**
5	**SWOT Analysis: APD Data Planning Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with city departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Data Planning division has very few, if any, strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's knowledge of the principles of diversity, equity and inclusion. When asked about strategies for ensuring racial equity during the recruiting and hiring process, division leadership responded, "I'd prefer to hire diversity of thinking versus diversity of race," as if the two concepts are mutually exclusive. Division leadership did not provide specific, measurable practices or strategies related to equitable hiring practices. When asked to consider the relationship between the racial makeup of divisional staff and the community served by its work, division leadership responded, "I haven't thought about it to be honest. We do make efforts to have diverse hiring panels." While this intention is helpful and signals a willingness to learn, the division's responses indicate a general absence of specific strategies for ensuring equity in recruitment, hiring processes, community engagement, and other important areas.

The Data Planning division lacks specific strategies for ensuring equitable access to the data that it produces. While the division points to a large number of datasets offered through the City's Open Data Portal, the division's responses to the equity assessment tool indicate an absence of strategies for ensuring that data is accessible and understandable by Austin's residents. When asked about ensuring accessibility and understanding of its data, division leadership responded, "We don't have a process for determining reading level. All of our public facing documents are placed on either APD's public site or the City of Austin's Open Data Portal—I guess we assume since they can get to that, they have the ability to download, read, and consume our documents and datasets." This is precisely the type of assumption that inhibits widespread access and understanding of internal data. Government data is often written in language that is generally inaccessible to individuals without advanced knowledge of complex data, government jargon, and government processes. Division leadership goes on to say, "The number and complexity of our research projects, reports, and datasets has increased steadily over the past three years." This appears to be an admission of the complexity of the very data in question. The APD datasets available through the Open Data Portal contain variables and categories that are often undefined, and when asked during a meeting about a codebook for understanding the variable codings, which is not provided alongside the dataset online, division leadership provided a business card and instructed the researcher to send a request for the codebook directly through email. How is the average resident supposed to know the process for finding such a codebook? This lack of structured accessibility protocol inhibits residents from accessing and understanding the data provided by the division through the open data portal and would fail even the most basic test of transparency. Similarly, when addressing translation of data and reports into languages other

than English, the division fails to provide any evidence of active equity-driven strategies or protocols.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During qualitative interviews, community members expressed two primary concerns related to the Data Planning division: access to information and lack of translation. Community members expressed that they were unable to understand the process by which the division selects data for publication and unfamiliar with the process for accessing data on policing. For community members, APD data is difficult to understand, includes unexplained variables, and is written in the internal language of the Police Department, rather than language that is familiar to residents. Community members that participated in interviews believe that the division should make a stronger attempt to make data more accessible to individuals who are not well-versed in the language of the police department. Community members who participated in interviews also expressed frustration that APD data is not readily available in languages other than English. Community members correctly pointed out that negative outcomes related to policing are suffered disproportionately by communities of color, which includes immigrant communities. Community members expressed frustration that individuals whose primary language is not English seem overlooked by division leaders.

Recommendation: Develop and Implement Departmental Strategies and Requirements for Ensuring Equitable Outcomes in Hiring, Project Management, and Data Provision

APD's Data Planning division lacks clear and measurable strategies and protocols for achieving equitable outcomes. From hiring to data provision to community engagement, division leadership was unable to provide much evidence for a culture of diversity, equity and inclusion within the division. According to responses to the equity assessment tool, division leadership seems to rely on personal perceptions of diversity, rather than measurable, informed approaches to implementing equity standards. Division leadership should collaborate with the Equity Office

to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues.

SWOT Analysis: APD Data Planning Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Compiles data (including demographic data) on officer-involved shootings, traffic stops and other incidents that can be used for analysis by researchers, community organizations and members of the public Identifies the importance of improving gender-based data in self-assessment, although division systems at the time of self-assessment only recognized binary gender identity options (male/female) Attends and provides information at some community engagement events focused on equity-related issues	Lack of diversity among division staff Division does not provide demographic data on contractors/consultants or analysis of demographic data on contractors/consultants Division does not provide demographic data on racial disparities among client populations Division does not provide specific or measurable evidence of strategies to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for strengthening or ensuring equitable practices Does not provide evidence of efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Does not provide translation of public documents, datasets, or other information into languages other than English Does not collect client satisfaction data (including demographic data) Does not provide evidence of efforts to engage specifically with marginalized communities

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of institutional and individual understanding among division leadership with regard to principles of diversity, equity and inclusion Lack of coherent plan or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion External pressure from political actors weakens community trust in APD commitment to equity principles

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Compiles data (including demographic data) on officer-involved shootings, traffic stops and other incidents that can be used for analysis by researchers, community organizations and members of the public

Identifies the importance of improving gender-based data in self-assessment, although division systems at the time of self-assessment only recognized binary gender identity options (male/female)

Attends and provides information at some community engagement events focused on equity-related issues

Weaknesses

Lack of diversity among division staff

Division does not provide demographic data on contractors/consultants or analysis of demographic data on contractors/consultants

Division does not provide demographic data on racial disparities among client populations

Division does not provide specific or measurable evidence of strategies to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide any specific or measurable standards for strengthening or ensuring equitable practices

Does not provide evidence of efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Does not provide translation of public documents, datasets, or other information into languages other than English

Does not collect client satisfaction data (including demographic data)

Does not provide evidence of efforts to engage specifically with marginalized communities

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Lack of institutional and individual understanding among division leadership with regard to principles of diversity, equity and inclusion

Lack of coherent plan or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion

External pressure from political actors weakens community trust in APD commitment to equity principles

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Austin Police Department
Internal Affairs and Professional Standards Division

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Community and Staff Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Internal Affairs and Professional Standards Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

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In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable steps toward implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Internal Affairs and Professional Standards division has few strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's ability to implement principles of diversity, equity and inclusion. Unlike other divisions, Internal Affairs and Professional Standards sources its staff from active APD employees, specifically sworn officers. This system of staffing limits leadership's ability to access a diverse candidate pool and binds the division to the outcomes of APD's Recruiting and Training Divisions. If the Training Division, which fails tremendously to implement the principles of equity, does not graduate diverse classes from its academy, Internal Affairs is, by extension, prohibited from accessing a diverse candidate pool. Perhaps more than any other example, this highlights the need for deep and systemic changes at APD.

Division leadership seems aware of the importance of diversity, equity and inclusion, but responses to the equity assessment verify that this awareness is not supported by systemic measures that ensure equitable outcomes. Division leadership points repeatedly to its relationship with the Office of Police Oversight, which should be supported and strengthened. Without internal processes and systemic changes, the partnership between IA and the OPO alone cannot fully address the division's inability to institutionalize the principles of diversity, equity and inclusion.

Community and Staff Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During qualitative interviews with community members, respondents expressed concern at the staffing system employed by Internal Affairs and Professional Standards. Similar concerns were expressed by an APD division leader interviewed as part of this evaluation. Respondents are concerned that the practice of rotating officers in and out of Internal Affairs incentivizes officers to "go easy" on their counterparts under investigation, either out of a sense of loyalty or a fear of retaliation. APD staff who expressed concerns over this issue identified the paramilitary nature

of the police department as promoting a culture of loyalty over principle. If officers are incentivized, or intimidated, to embrace loyalty, the department's stated commitment to creating more equitable outcomes will likely fail. Organizations that state commitments to equitable outcomes must prioritize those principles and implement organizational changes that prioritize those commitments and protect their underlying principles.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Internal Affairs and Professional Standards division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division does not have clear strategies that foster a diverse and inclusive environment. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing a long-term action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Internal Affairs and Professional Standards division can begin to address its shortcomings and take measurable steps toward building a culture of diversity, equity and inclusion within its ranks.

SWOT Analysis: APD Internal Affairs and Professional Standards Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Collects and provides demographic data on contractors/consultants Division consults with the Office of Police Oversight to provide public documents and data on complaints Consults with Office of Police Oversight to provide translation of some public documents into Spanish Participated in community forums with Office of Police Oversight	Staff diversity does not reflect Austin's racial makeup (64% of employees are white; fewer than 50% of Austin residents are white) Division does not collect data on racial disparities among client populations Division does not have strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for strengthening or ensuring equitable practices related to community engagement Does not provide evidence of strategies to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Does not provide evidence of institutional strategies to ensure access, translation and readability of public documents Division does not provide evidence of direct efforts to engage specifically with marginalized communities Due to overall lack of diversity at APD, division struggles to diversify staffing

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Failure of APD to recruit, train and graduate diverse cadet classes (prevents division from diversifying staff) Lack of clear strategies or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion External pressure from political actors weakens community trust in APD commitment to equity principles Structure and staffing model of division may impede fair and equitable investigations

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Collects and provides demographic data on contractors/consultants

Division consults with the Office of Police Oversight to provide public documents and data on complaints

Consults with Office of Police Oversight to provide translation of some public documents into Spanish

Participated in community forums with Office of Police Oversight

Weaknesses

Staff diversity does not reflect Austin's racial makeup (64% of employees are white; fewer than 50% of Austin residents are white)

Division does not collect data on racial disparities among client populations

Division does have strategies in place to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings

Does not provide any specific or measurable standards for strengthening or ensuring equitable practices related to community engagement

Does not provide evidence of strategies to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Does not provide evidence of institutional strategies to ensure access, translation and readability of public documents

Division does not provide evidence of direct efforts to engage specifically with marginalized communities

Due to overall lack of diversity at APD, division struggles to diversify staffing

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Failure of APD to recruit, train and graduate diverse cadet classes (prevents division from diversifying staff)

Lack of clear strategies or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion

External pressure from political actors weakens community trust in APD commitment to equity principles

Structure and staffing model of division may impede fair and equitable investigations, as IA officers are incentivized to protect one another, avoid retaliation by "going easy"

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

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Community + APD Equity Assessment Series:
Austin Police Department, Finance Division

Research and analysis provided by the Peace Mill

December 28, 2020



Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Responses to APD Equity Assessment Results**
3	**Community Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Finance Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

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[1] Austin City Council Resolution 20150507-027

Analysis of Division Responses to APD Equity Assessment Results

APD's Finance division has a diverse staff and its leadership provides thoughtful, intentional responses to the equity assessment process. Division leadership clearly identifies problems with institutional policies that prevent the police department from pursuing systemic racial equity. Like many other divisions, Finance does not receive institutional support to strengthen equitable outcomes. While the division is one of the few in its equity assessment cohort with a staff that generally reflects the racial demographics of Austin, this makes the division an outlier. The racial equity achieved within the division's staff is not reflective of any broad culture of diversity, equity, and inclusion. Rather, this parity is achieved because division leaders are aware of, and at least committed to addressing, the need for strong equity standards within the department.

The Finance division shares many of the shortcomings of its equity assessment cohort. Finance does not have specific, measurable strategies in place for ensuring equitable hiring or contracting practices. The division does not have a process in place for ensuring the prevention of adverse effects of their programming on marginalized communities. The division also lacks clear community engagement strategies, standards or measures for improving racial equity, strategies for measuring racial disparities among its clients.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During community interviews, respondents' primary concern addressed accessibility and readability of finance data. Community respondents were interested in understanding how APD spends taxpayer dollars, but finance documents are typically written for internal purposes, which can create barriers for those unfamiliar with APD's institutional language. Respondents indicated a need for more accessible documents and reports, written at a reading level that is accessible to larger sections of the general population. This need is reflected in the division's own self-assessment. Division leaders seem to be aware of the need for more accessible information and committed to achieving this goal. Community respondents were also concerned about the general lack of translation, as most APD data is only available in English, including finance data.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Finance division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division does not have clear strategies to foster a culture of diversity, equity inclusion. The division's notable efforts to address some equity concerns is an encouraging sign, but those measures must be strengthened and codified. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing a long-term action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Finance division can build on its first steps toward building a culture of diversity, equity and inclusion within the division and influence major changes throughout APD.

SWOT Analysis: APD Finance Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Division staff diversity reflects diversity of Austin's residents Division provides demographic data on contractors/consultants Openly addresses institutional policies that inhibit equitable outcomes (allowing contractors to opt out of providing staff demographic data) Provides thoughtful responses when asked to propose ideas for strengthening racial and gender equity within division, externalizes to APD as a whole Attends and provides information at some community engagement events focused on equity-related issues Identifies some division programming that make a targeted effort to provide programming in languages other than English Recently completed assessment of reading level of divisional documents, developing plan to increase access/readability	Division does not collect data on racial disparities among client populations Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings Does not provide specific, measurable strategies / indicators for ensuring equitable outcomes in hiring, contracting Does not provide measurable evidence of division-specific efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of division-specific efforts to improve racial equity (including budget) Does not collect client satisfaction data (including demographic data) Does not collect community engagement data that allows for equity analysis

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Division staff diversity reflects diversity of Austin's residents

Division provides demographic data on contractors/consultants

Openly addresses institutional policies that inhibit equitable outcomes (allowing contractors to opt out of providing staff demographic data)

Provides thoughtful responses when asked to propose ideas for strengthening racial and gender equity within division, externalizes to APD as a whole

Attends and provides information at some community engagement events focused on equity-related issues

Identifies some division programming that make a targeted effort to provide programming in languages other than English

Recently completed assessment of reading level of divisional documents, developing plan to increase access/readability

Weaknesses

Division does not collect data on racial disparities among client populations

Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings

Does not provide specific, measurable strategies / indicators for ensuring equitable outcomes in hiring, contracting

Does not provide measurable evidence of division-specific efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of division-specific efforts to improve racial equity (including budget)

Does not collect client satisfaction data (including demographic data)

Does not collect community engagement data that allows for equity analysis

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Austin Police Department, Human Resources Division

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Human Resources Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Human Resources division has a diverse staff and its leadership provides thoughtful, intentional responses to the equity assessment process. Division leadership clearly identifies problems with institutional policies that prevent the police department from pursuing systemic racial equity. Like many other divisions, Human Resources does not receive institutional support to strengthen equitable outcomes. While the division is one of the few in its equity assessment cohort with a staff that generally reflects the racial demographics of Austin, this makes the division an outlier. The racial equity achieved within the division's staff is not reflective of any broad culture of diversity, equity, and inclusion. Rather, this parity is achieved because division leaders are aware of, and at least committed to addressing, the need for strong equity standards within the department.

The division's responses to the equity assessment tool identify a series of opportunities for developing and implementing strategies for improving equitable outcomes. Like many APD divisions, Human Resources lacks division-mandated training on diversity, equity, and inclusion. Available trainings are voluntary. The division does have systems in place for assessing negative impacts of its policies and programs on marginalized communities, especially communities of color. While Human Resources collects impressive amounts of data and provides them in clear and understandable formats in response to the equity analysis tool, the division does not have a clear community engagement strategy, which can leave community stakeholders out of its decision making process and adversely affect communities of color and other marginalized communities.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Human Resources division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of institutional strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division is committed to the *ideas* of diversity, equity, and inclusion, but this is only one step of many. The division's notable effort to address some equity concerns is an encouraging sign, but those measures must be strengthened and codified. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing and implementing a long-term, equity-focused action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Human Resources division

can build on its first steps toward building a culture of diversity, equity and inclusion within the division and influence major changes throughout APD.

SWOT Analysis: APD Human Resources Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Division collects and provides demographic data on division staff Division collects and provides demographic data on contractors/consultants Division staff diversity reflects diversity of Austin's residents Division provides strategies for strengthening equitable outcomes in hiring processes Division provides propositions for strengthening equitable outcomes for staff Division provides some translation of public documents, datasets, or other information into languages other than English	Division does not collect demographic data on racial disparities among client populations Division does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide specific strategies or evidence of proactive efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Division does not currently collaborate with other city departments to advance racial equity in Austin Does not provide evidence of efforts to engage specifically with marginalized communities in budgeting process Participation in diversity, equity and inclusion trainings are voluntary for division staff

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of mandatory training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Division collects and provides demographic data on division staff

Division collects and provides demographic data on contractors/consultants

Division staff diversity reflects diversity of Austin's residents

Division provides strategies for strengthening equitable outcomes in hiring processes

Division provides propositions for strengthening equitable outcomes for staff

Division provides some translation of public documents, datasets, or other information into languages other than English

Weaknesses

Division does not collect demographic data on racial disparities among client populations

Division does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide specific strategies or evidence of proactive efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Division does not currently collaborate with other city departments to advance racial equity in Austin

Does not provide evidence of efforts to engage specifically with marginalized communities in budgeting process

Participation in diversity, equity and inclusion trainings are voluntary for division staff

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of mandatory training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

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Austin Police Department, Victims Services Division

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THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Community Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Victims Services Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

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[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Victims Services division performs a critical role and engages with thousands of Austin residents who are predominantly persons of color. With limited resources, the division makes a strong effort to communicate with its clients in multiple languages. Its staff is more diverse than some of its equity assessment cohort divisions, though staffing demographics do not fully reflect the demographic makeup of the division's clients in the community. The division does not have firm strategies in place to ensure a diverse staff or equitable hiring processes.

Like many APD divisions, Victims Services does not mandate division-specific training on diversity, equity and inclusion. Staff do voluntarily attend a wider variety of equity-driven training, mostly through UT's School of Social Work. However, the lack of mandated equity training reflects the wider trend at APD, with most divisions in this equity assessment cohort using ad hoc practices and relying on individual voluntary engagement with these critical learning opportunities.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

Community respondents who participated in qualitative interviews focused primarily on Victims Services' need for expanded translation capabilities. Respondents highlighted the broad diversity of languages spoken by victims of crimes in Austin. Respondents also highlighted the disparate impact that crime has on non-English speaking communities, including refugee and immigrant communities. Community members pointed to these disparities as evidence that APD must prioritize translation services as a high priority in any strategies for improving equitable outcomes created by its community programming. This concern reflects the responses of the division's leadership, highlighting widespread agreement that translation and equitable access must drive decisions and not continue to exist as an institutional afterthought.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Victims Services division's self-assessment, coupled with evidence gathered during qualitative interviews, highlights a unique need to prioritize translation services, access to information, and innovating community engagement strategies. The division's leadership expresses a desire to strengthen diversity among its staff and equity in the services it provides to clients, but like many divisions, Victims Services lacks clear strategies for ensuring equitable practices and outcomes. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, translation services, and other critical issues. By building on the knowledge of equity possessed by many of the division's staff, which includes many social workers, Victims Services can help the department build and sustain a culture of diversity, equity and inclusion that will have positive external effects for other divisions, community clients, and the City of Austin writ large.

SWOT Analysis: APD Victims Services Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Division collects and provides demographic data on contractors/consultants Division collects some demographic data on clients served Division consults with Department of Public Health in equity-based discussions Attends and provides information at some community engagement events focused on equity-related issues Provides some resources to clients in languages other than English, recognizes importance of expanding translation to meet needs of diverse client base Engages in some community engagement events, provides Spanish translation at events	Division staff diversity loosely reflects Austin demographics but does not reflect the demographics of client communities, which are predominantly communities of color Division does not collect demographic data on racial disparities among client populations Division does not have specific or measurable strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any current specific or measurable standards for strengthening or ensuring equitable practices (leadership expresses interest in making changes) Division does not currently assess reading level of written materials, other information Division does not have specific or measurable strategies in place to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Division does not collect client (community members, crime victims) satisfaction data

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership Lack of institutional commitment to adequate translation services at APD threatens division's specific and tremendous need to communicate in many languages other than English

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Division collects and provides demographic data on contractors/consultants

Division collects some demographic data on clients served

Division consults with Department of Public Health in equity-based discussions

Attends and provides information at some community engagement events focused on equity-related issues

Provides some resources to clients in languages other than English, recognizes importance of expanding translation to meet needs of diverse client base

Engages in some community engagement events, provides Spanish translation at events

Weaknesses

Division staff diversity loosely reflects Austin demographics but does not reflect the demographics of client communities, which are predominantly communities of color

Division does not collect demographic data on racial disparities among client populations

Division does not have specific or measurable strategies in place to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide any current specific or measurable standards for strengthening or ensuring equitable practices (leadership expresses interest in making changes)

Division does not currently assess reading level of written materials, other information

Division does not have specific or measurable strategies in place to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Division does not collect client (community members, crime victims) satisfaction data

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Lack of institutional commitment to adequate translation services at APD threatens division's specific and tremendous need to communicate in many languages other than English

Research Methods

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Community Engagement Process Evaluation and Recommendations

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THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

List of Acronyms	3
Summary	4
Background: Equity Office and Equity Assessment Tool	7
Community + APD Meeting Series: Background	8
Community + APD Meeting Series - Overview and Structure	8
Purpose of Report and Research Methods	11
Results Summary	12
SWOT Analysis	13
Recommendations	15
Conclusion, Context, and Insights	18
About the Researcher	19

Acronyms

APD: Austin Police Department

C+APD: Community + APD (the informal name of the meetings between community and APD)

COA: City of Austin

EAT: Equity Action Team

SWOT: Strengths, Weaknesses, Opportunities and Threats, a type of analysis framework

Summary

This report assesses the pilot phase of the Community + APD initiative, a series of meetings organized and facilitated by the City of Austin Equity Office as part of its equity assessment of the Austin Police Department. In 2019, the City of Austin's Equity Office engaged the Austin Police Department in an uncommon strategy to address systemic inequities in policing. As local governments across the country struggled to address growing tensions between underserved, overpoliced communities and city police departments, the Equity Office invited the Austin Police Department and collection of community members to a series of important dialogues on equity and policing. This report assesses the strengths and weaknesses of the Community + APD initiative and provides a series of recommendations for improving future meeting series.

As part of the City's equity assessment process, APD staff and officers, community leaders, and Austin residents gathered together for a series of dialogues, during which community members could engage directly with APD representatives. The discussions centered around each division's responses to the Equity Assessment Tool and were designed to add a level of community accountability to the equity assessment process. While some community participants were associated with the Equity Action Team, others in attendance were unaffiliated residents.

Over the course of many weeks, community members and APD staff and officers engaged in direct, facilitated conversations on hiring practices, victim service provision, data collection, use of force training, and a host of other issues related to equity and policing in Austin. At each meeting, participants sat together over a locally prepared meal, co-created ground rules for the discussions, and proceeded through approximately two hours of facilitated discussion. Community members led the discussions by asking questions related to each division's Equity Assessment Tool responses. APD division representatives, including sworn and civilian staff, responded to community members' questions in two main formats:

- Rotating small group discussions:
    - Divisions sit at separate tables with 3-5 community members

  - Community members ask questions, division representatives respond, dialogue
  - After an allotted time, community members rotate to new division tables
  - Professional facilitator manages process, engages groups at random

- Static large group discussion:
  - Questions are sourced one at a time from assembled community members
  - APD responds to questions one at a time, dialogues with community members
  - Professional facilitator manages process, allocating specific times for APD responses and community followup questions

The report that informed this report includes several measures designed to assess the strengths and weaknesses of the pilot series of Community + APD meetings. To produce this report, the Equity Office engaged a local, third-party researcher to assess the pilot program and make recommendations for improving the process. This research included observation of Community + APD discussions, desk research (project documents, feedback forms and related reports), and a series of in-person, qualitative interviews. Interview respondents included APD staff and officers, community leaders, independent residents, and Equity Office staff.

Respondents were overwhelmingly supportive of the Community + APD initiative. Most offered recommendations for strengthening the program, but all respondents agreed that the Community + APD program was a worthwhile investment of community, City of Austin and APD resources. The Community + APD meetings created an uncommon mechanism for direct resident accountability and the multidimensional meeting structure facilitated a variety of group dynamics. Equity Office staff leveraged the Equity Action Team's deep community roots to recruit a broad spectrum of community participants. Despite a volatile political climate, Community + APD participants gathered each week and honored the contract that they had drafted together, engaging in a constructive and respectful dialogue.

This report's findings indicate a need for increased institutional support for the Community + APD initiative. City leaders should provide expanded resources to address shortcomings identified during the program's pilot phase. Interview respondents from all groups agreed that future participants would benefit from a more in-depth training/onboarding process, including informative sessions on the structure and history of APD, the equity analysis process and other topics that would facilitate more productive discussions. This report also offers a series of detailed recommendations based on the interview responses of Community + APD participants. These recommendations include:

- additional training + onboarding + relationship building sessions
- increased budgetary support
- incentive packages for Community +APD initiative community members
- codified equity assessment standards at APD
- implementation of guidelines for increased cohesion and engagement
- development of equity liaison role within APD to facilitate assessment process

During a time of unprecedented public mobilization and often hostile rhetoric on issues of equity and policing, the Community + APD initiative provides an opportunity for peaceful, constructive dialogue between representatives of the police department and the communities that they are sworn to serve. City leaders should provide increased support to ensure that the Community +APD initiative can play a role in the equity assessment process for all APD divisions. Through increased support for this hopeful initiative and broader institutional backing for equity-driven change across city government, Austin's leaders can take a small step step down the narrow path toward mending the deep wounds caused by decades of systemic oppression and structural directed toward Black, Latinx, Indigenous, immigrant, refugee, LGBTQ+ and other historically marginalized communities who live, work, and worship in Austin.

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OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

Community + APD Meeting Series: Background

In 2018, Austin's City Manager supported the expansion of departmental equity assessments and mandated that all City departments complete the process. The second equity assessment cohort included the Austin Police Department, an immense organization with 2,646 employees divided among 48 divisions. Due to the department's size and input from the community, Equity Office staff determined that it would benefit the process, the community and the police department to directly engage community members and APD employees in a series of dialogues over several months in 2019 as part of APD's equity assessment process. These meetings were generally referred to as "Community and APD." For the purposes of this report, the meeting series is referred to interchangeably as Community + APD or C+APD.

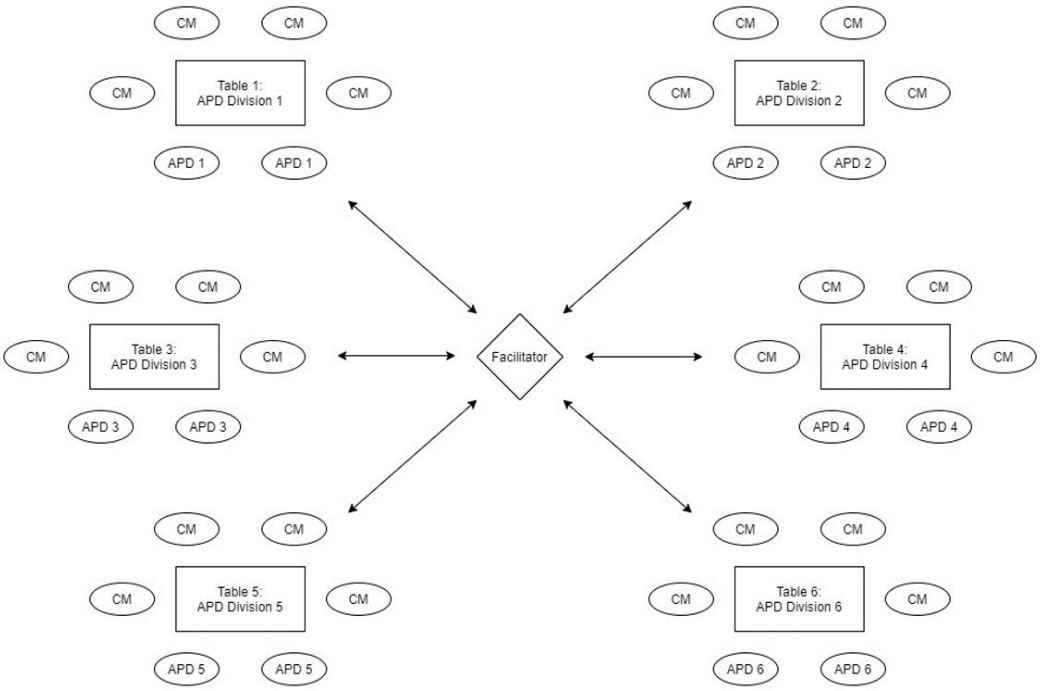
Community + APD Meeting Series - Overview and Structure

The pilot series of C+APD meetings involved seven APD divisions: Recruiting, Training, Finance, Internal Affairs and Professional Standards, Human Resources and Administration, Data Planning, and Victims Services. During the C+APD meeting series, meetings took one of two structures: small group discussions based on division or large format discussions, during which each division presented.

Small Group Format. During the first segment of meetings, participants met in small groups, with several community members gathering around a table with representatives from a single APD division (see Figure 1). Representatives from each division responded to community members' questions, which were generated in response to answers from APD's equity assessment. After division representatives answered initial questions, community members and APD engaged in dialogue to clarify answers, seek and provide further information, and address community concerns related to each division's responses. After a period of time, the C+APD

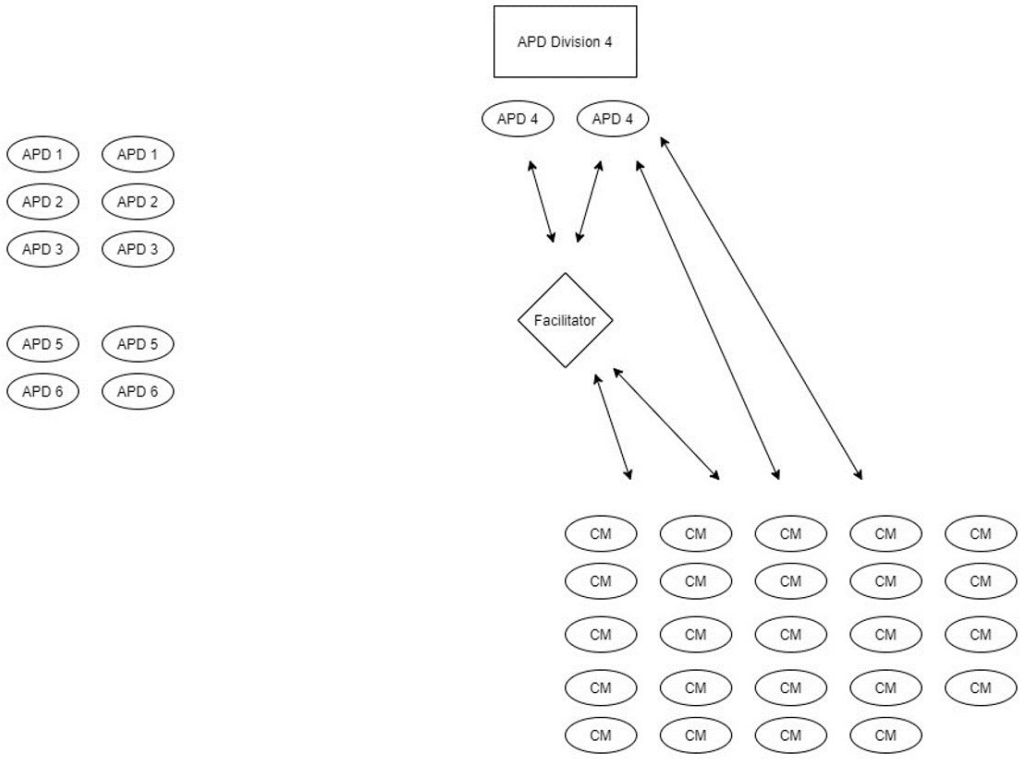
facilitator directed the community groups to rotate and join different division tables, repeating the dialogue process several times until the meeting was concluded.

Figure 1. Discussion Structure 1: Community + APD Equity Assessment Process



Large Group Format. In addition to the roundtable discussions, C+APD participants discussed APD equity assessment responses in a large group format (see Figure 2). Under this arrangement, rather than separating community members into small groups, community members remained gathered in a single, large group. Community questions were presented to APD division leaders one at a time, with an allotted period for discussion afterward. After the allotted time had elapsed, APD divisions rotated and the discussions continued until the meeting was concluded.

Figure 2. Discussion Structure 2: Community + APD Equity Assessment Process



To ensure transparency and accountability, the Equity Office contracted a researcher to attend C+APD meetings, observe interactions between participants, conduct qualitative interviews with participants, and produce recommendations for improving the C+APD equity analysis process. The goals of this research and purposes of this report are to:

- Identify common themes expressed by participants
- Analyze the C+APD program's strengths, weakness, opportunities and threats
- Generate actionable, evidence-driven recommendations for future meetings

Since August 2019, the researcher tasked with producing this report has completed the following research activities:

- Community + APD meeting attendance and observation
- Desk research
- Semi-structured, qualitative interviews with C+APD participants

This report draws equally from the researcher's observations, background research and interview responses. During C+APD meetings, the researcher observed interactions between participants to identify common themes, obtained direct feedback from participants and documented the meeting structure and other details. Participant interviews included Equity Office/C+APD staff, Austin community members, and APD staff and sworn officers. Interviews were semi-structured and tailored to participant roles. While some questions were posed to all participants, APD staff and officers were asked questions that related directly to their role, work, experiences, and perspectives as members of APD. Similarly, community members were asked questions that related directly to their experience and perspectives as community members.

Interviewees self-selected into the study group. After the C+APD meeting series concluded, Equity Office staff provided the researcher with a contact list of C+APD meeting participants, both community members and APD. The researcher invited all C+APD contacts to participate in

an initial survey. Those who responded to the survey were invited to participate in a longer, qualitative interview. The researcher conducted twelve semi-structured interviews, during which respondents were asked a series of prepared questions. Upon completion of the prepared questions, the researcher asked participants to offer general thoughts, recommendations and general responses to the C+APD experience. Interview participants included APD staff and officers (5), community members (4) and Equity Office staff (2). Due to the sensitive nature of the interviews, concerns about possible retaliation toward respondents, and a desire to create a safe space where respondents could offer their unfiltered perspectives, the researcher anonymized the respondents. To this end and for the purposes of this report, respondents are described as APD employees, community members, or equity office staff. Any language that may indicate the identity of specific respondents has been intentionally omitted from this report.

Results

The organizers and participants of the C+APD undertook a difficult task with relatively little precedent. The pilot series of C+APD meetings provided a strong baseline upon which Equity Office staff can build future meeting series. While interview respondents offered a host of recommendations for improving the experience, each participant expressed overall satisfaction with the program. Equity Office staff increased accountability by engaging a wide range of community perspectives and including an evaluation mechanism. The C+APD facilitator varied the meeting structure, allowing participants to engage with one another in multiple formats, including small group and large presentation settings. City staff successfully recruited community participants with a range of perspectives, and participants honored a contract to engage in respectful, constructive dialogue.

Figure 3. SWOT Analysis of Community + APD Equity Assessment Process

Strengths	**Opportunities**
Strong buy-in from community, APD staff/officers and city staff	Strengthening citizen oversight mechanisms, reinforcing community dialogues
Direct community engagement provided by meeting structure provided increased transparency and accountability	Development and implementation of C+APD training curriculum
Multi-dimensional meeting structure increased opportunities for dialogue	Increased budgetary support to Equity Office for resources, staffing, translation services
City staff recruited broad spectrum of community participants	Incentive programs to strengthen community participation
City staff and facilitator created a "graceful space" - participants honored group contract	Development of standard equity assessment process within APD
Weaknesses	**Threats**
Lack of resources and incentives limits engagement	External pressure from political actors and political climate may influence participants
Community members and APD lacked comprehensive training, sufficient preparation	Fear of retaliation, other threats increase attrition and decrease participant engagement
Time constraints limit opportunities to build trust between community and APD	High profile incidents may influence participant engagement
Absence of accountability metrics makes it difficult to measure equity-related outcomes	Systemic, institutional racism threatens to prevent high level changes
Participants did not clearly understand goals or intended outcomes	Failure to codify equity standards and assessment processes weaken institutional memory

Through their discourse during meetings and their survey and interview responses, C+APD participants highlighted a litany of positive experiences, opportunities for improvement, moments of confusion, challenges, frustrations and hopes. This report synthesizes their ideas into an abbreviated SWOT analysis, highlighting the C+APD initiative's strengths, weaknesses, opportunities, and threats. These are outlined in Figure 3 above and the bulleted lists below.

Strengths

- Strong buy-in from community members, APD and staff
- Direct community engagement and evaluation increase transparency and accountability
- Multi-dimensional meeting structure increased dialogue
- City staff recruited broad spectrum of community perspective
- "Graceful space" - participants honored group contract

Weaknesses

- Lack of resources and incentives limits engagement
- Community members and APD lacked comprehensive training, sufficient preparation
- Time constraints limit opportunities to build trust between community and APD
- Absence of accountability metrics makes it difficult to measure equity-related outcomes
- Participants did not clearly understand goals or intended outcomes

Opportunities

- Strengthening citizen oversight mechanisms, reinforcing community dialogues
- Development and implementation of training curriculum
- Increased budgetary support to Equity Office for resources, staffing, translation services
- Incentive programs to strengthen community participation
- Development of standard equity assessment process within APD

Threats

- External pressure from political actors and political climate may influence participants
- Fear of retaliation, other threats increase attrition and decrease participant engagement
- High profile incidents may influence participant engagement
- Systemic, institutional racism threatens to prevent high level changes
- Failure to codify equity standards and assessment processes weaken institutional memory

General Recommendations

Due to widespread support from community members, APD employees and City officials, the researcher recommends that city officials extend the Community + APD meeting series and include a series of C+APD meetings as part of each cohort of APD divisions' equity analysis process. While the pilot series of meetings accomplished a great deal of progress, the researcher has included the following list of recommendations to improve the C+APD process and the overall experience of C+APD participants. These recommendations are designed to represent participant voices by synthesizing the collective needs expressed during meetings, surveys and interviews.

Recommendation 1: Develop a training workshop that briefs participants on equity principles, equity analysis tool and process, APD systems and C+APD goals

Most interview respondents expressed a general lack of understanding of the overarching goals or intended outcomes of the C+APD process. Equity Office staff should develop and incorporate one full day or two half days of training for all C+APD participants that includes:

- Equity principles and frameworks
- History of Equity Office and equity assessment tool
- Equity assessment process: guidelines for implementation
- APD organizational history, systems, structure and processes
- C+APD process, goals, intended outcomes, and process

Recommendation 2: City officials should reallocate a portion of the public safety budget to the Equity Office to ensure the success and sustainability of future C+APD meeting series.

The Community + APD pilot program achieved remarkable results while operating with significantly constrained resources. City officials should increase budgetary support to the Equity Office to directly support the expansion of the C+APD initiative. The Equity Office should include specific funding for the expansion of C+APD in future budget requests, and City officials should honor these requests as a commitment to the community members engaged in

these critical dialogues. These resources should be reallocated from the public safety budget as an earnest investment and symbol of commitment to improving APD's relationship with the community.

Recommendation 3: To increase participation and mitigate attrition, officials should develop an incentive package for community participants who are attending as independent residents.

Community members struggle to participate in important initiatives such as the C+APD program. Many economic factors, including the cost of transportation and the lack of childcare, prohibit residents from participating in the C+APD initiative. To increase access to meetings and enrich the discussions with the voices and lived experiences of Austin residents, City leaders should fund the development of incentive packages for resident participants. These packages can include:

- Stipends to cover travel and participation costs
- Childcare services for families
- Translation services for non-English speaking participants
- Additional services or incentives that may increase engagement

Recommendation 4: To foster trust, APD officers and staff should attend meetings in business casual or casual "civilian dress" and should arrive at meetings unarmed.

Community members, APD staff and sworn officers all identified a need for increased trust between participants. During interviews, many respondents agreed that the mere presence of a police officer's tactical gear, especially an officer's service weapon, can make community members less likely to engage in a difficult, honest dialogue and generally make community members feel less comfortable. All C+APD participants should take measures to increase trust and foster a comfortable meeting space. APD leadership should direct all armed officers participating in the C+APD program to arrive in casual clothing and to attend meetings unarmed.

Recommendation 5: Officials must codify APD equity standards and assessment processes. APD division leaders undertook varied approaches when completing the equity assessment process. Some division leaders collaborated with staff to provide comprehensive, quantitative answers to the assessment tool's list of questions. Other division leaders completed the assessment without input from other staff. In interviews, APD staff highlighted a lack of clear direction from APD leadership for completing the equity assessment process. By co-creating equity assessment standards with support from the Equity Office and codifying those standards as department-wide protocol, APD leadership can better support division leaders and ensure assessment results that are measurable, accurate and actionable.

Recommendation 6: Create an equity liaison role, overseen by the Equity Office, to ensure continual support and accountability for all APD divisions as they address inequities. During interviews, APD participants expressed support for additional guidance during the equity assessment process. Most divisions and division leaders lack the additional time needed to learn and implement the equity tool well. City officials should create and fund an equity assessment liaison, a role housed outside of the police department to ensure independence. This individual would oversee the implementation of a systemic, department-wide equity assessment process. As new cohorts of divisions complete the assessment process, this equity liaison would provide support, guidance, and oversight of division leaders and their teams. The liaison would ensure that each division's equity analysis gathered measurable evidence and produced actionable results. The independence of this role, and of any positioning ensuring accountability to equity standards, is absolutely critical.

A note on Recommendation 6: Many public agencies assume that symbolic hiring will solve issues of organizational racism. Simply creating an equity officer (or similar administrative role) within the police department will not solve the systemic issues facing APD. Creating such a role within the police department would provide the opportunity for current leadership to evade its own obligations to serious reforms. Before any new positions are created within APD, the

agency must address the deep systemic and cultural problems that have been brought to light during recent events and during the C+APD meetings.

Conclusion, Context, and Insights

This report provides a series of achievable recommendations that comprise a single first step toward a stronger, more equitable relationship between the communities of Austin, Texas, and the privileged individuals who are sworn to serve those communities. These recommendations include increased financial and staffing support for the C+APD community dialogue series, actionable guidelines for APD employees to help build trust with community members, and codified equity standards to ensure deep systemic and cultural change at APD.

It is impossible to deliver this report without reflecting on the demonstrations taking place right now in cities across the United States, including Austin, in response to ongoing, systemic abuse and violence against Black, brown and poor communities by police forces; violations of international human rights standards by police forces; rapid militarization of local police forces; and cultures of racism, sexism, and homophobia among American police agencies. It is also essential to reflect on the ongoing police and military response to those demonstrations. How can a community place trust in the commitments of APD leaders to *de-escalatory, anti-racist* training policies when its riot control officers are shooting unarmed Black demonstrators in the face at short range with rubber bullets and launching CS gas into crowds that include children and pregnant women? How does the community trust the commitment of police leadership to *de-escalatory, anti-racist* training policies when another unarmed Black man is fatally shot by its officers in broad daylight in front of an exhausted community? How can community members build trust with police leaders who choose to leave as a unit during lunch at anti-racism workshops rather than break bread with the community members who have given their time freely to do the tremendous work of undoing systemic racism? These crucial questions arose from the community during interviews and conversations throughout this evaluation. Their honest criticisms provide critical citizen perspectives and a starting point for City leaders committed to building a more just and equitable Austin.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Racial Inequities and Institutional Racism:

A Report Submitted to The City of Austin Equity Office and The Austin Police Department

Joyce James Consulting
Equal Treatment Does Not Lead To Equity

November 2020

TABLE OF CONTENTS

Executive Summary 5
Introduction 5
Theories of Action 5
Background 5
Methodology 5
Documentation Review 5
Interviews 6
APD Climate Assessment Survey 6
"A Groundwater Analysis of Racial Inequities" Training 6
Analytical Framework—Texas Model for Addressing Racial Disproportionality and Disparities (2010) 6
Documentation Review—General Conclusions 6
Tatum Report 6
Police Profiling 7
Use of Force 7
Police Training 7
Community Policing 7
Recommendations 8
Data Driven Strategies 8
Leadership Development 8
Culturally Competent Workforce 8
Community Engagement: a four staged process 8
Cross Systems Collaboration 8
Training Defined by Anti-Racist Principles 9
An Understanding of the History of Institutional Racism and the Impact on Poor Communities and Communities of Color 9
Quick Wins 9
Documentation Review and Analysis 10
The Tatum Report 10
Review of the Report 10
Overview of the Report Recommendations 11
Key Observations/Comments from Interviews 11
Survey Data 11
The Joint Report on Racial Profiling, Responses and National Data 12
Austin Data 12
Overview of Recommendations 14
National Data 14
Key Observations/Comments from Interviews 15
Responses to the Report 15
Survey Data 17

Police Use of Force and Shootings....18
Austin Data....18
National Data....18
Key Observations/Comments from Interviews on Use of Force....18
Recommendations on Police Shootings and the Use of Force by the Office of Police Oversight....18
Survey Data....19
Police Training....19
Austin Data....19
National Data....20
Dr. Villanueva Recommendations....20
Key Observations/Comments from Interviews Regarding Training and Advancement....20
Community Responses to Training: (From the Responses to the Joint Report on Police Profiling)....22
Response 3....22
Community Policing....23
Austin Data....23
Community Policing Matrix Report 2020 Key Recommendations....23
Community Policing/Advancement in Austin 2020....23
National Data....23
Key Observations/Comments from Interviews....24
Survey Data....25
Conclusion....25
References....26
Appendix A: APD Climate Assessment Survey....27
Appendix B: Community Engagement Model....30
Appendix C:A Groundwater Analysis of Racial Inequities....32
Appendix D: The Groundwater Analysis Workshop Technical Assistance Report....35

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EXECUTIVE SUMMARY

Introduction

Joyce James Consulting, LLC (JJC) prepared this report for the City of Austin (City) Office of Equity (OOE). The OOE engaged JJC to help identify racial inequities within the Austin Police Department (APD) and develop immediate and prolonged strategies to eliminate them. Key components of the scope of work addressed by this report include a documentation review relevant to APD and racial disparities; survey of the APD climate and culture to include selected interviews; facilitation of the Groundwater Analysis® training and debrief for APD leadership; and work with the APD and OOE to develop the strategies and objectives based on the findings from the documentation review, interviews, training, and debrief.

The mission of JJC is to support organizations, institutions, systems and communities in developing a racial equity lens to recognize institutional and structural racism as the root cause of racial inequities in all systems. By assisting in the development of organizational cultures that actively engage in sustainable strategies to eliminate racism, JJC works to improve systemic outcomes for all populations.

JJC has decades of unique experience and proven success in reducing systemic racial disproportionality and disparities. Using the Texas Model for addressing racial inequities as an analytical framework and the Groundwater Analysis of Racial Inequities, JJC's work focuses on the intersectionality of racial inequities and deeply rooted institutional and structural racism.

Theories of Action

The success of the Texas Model, pioneered by Joyce James, is attributable to three theories of action: transformative learning, critical race theory (CRT), and adult learning.

Transformative learning is the "process of experiential learning, critical self-reflection, and rational discourse that can be stimulated by people, events, or changes in contexts that challenge the learner's basic assumptions" (Brown, 2006). Through transformative learning, key leaders and critical stakeholders will develop new learning that constructs and appropriates critical shifts in interpreting quantitative and qualitative data and information on racial inequities (Taylor, 2008).

Relative to transformational learning, key features of the critical race theory will serve to enhance and inform equity strategies. CRT argues that "racism and other forms of oppression are central to the experience of people of color and dominant ideologies justify the status quo/structural oppression and must be challenged" (DeMatthews, 2016).

Finally, the adult learning theory, in this context, means "making" or building "knowledge construction" in a way that fosters "critical reflection...essential for transformative learning" (Merriam, 2008). Leadership learning must take place using strategies that promote reflection, discussion, and action.

Background

The APD is a quintessential twenty-first century urban law enforcement organization. With more than 2,600 sworn and civilian personnel, the APD operates inside a densely populated city core and citizenry of nearly one million. Like many urban U. S. cities, the APD data show decades of racial disparities. That is, the known differences in how APD officers interact with people in communities of color.

City leadership is demanding change and voice a commitment, "...to implementing policy and cultural changes to address the disproportionate impact of police violence on people of color and other affected communities." To this end, the OOE and APD are working to make institutional and structural racism, which may be invisible to some, consciously aware to all. The ongoing, intentional and deliberate effort now underway by the APD is critical to moving beyond a somewhat singular emphasis on the bias, prejudice, and bigotry of racism at an individual level to a deeper more systemic analysis of the APD policies, practices and procedures that contribute to racial inequities and a culture that may be at work to keep them in place.

Methodology

Documentation Review

The documentation review reflects a national context when appropriate. While the OOE engaged JJC prior to the death of George Floyd and subsequent protests in Austin and across the country, racial strife in our country is not new nor is the racial strain between the police and the citizens (Brown, 2020; also see NPR on History of Policing in America).

The documentation review was inclusive of the following reports and documents:

- *Austin Police Department Independent Investigation Fact Investigation (referred to as the "Tatum Report")*
- *Analysis of Austin Police Department's Racial Profiling Report, January 2020*
- *The Science of Policing Equity*
- *Austin Police Department Annual Racial Profiling Report (Years 2006-2017)*
- *Community Policing Advancement in Austin*
- The APD Response to the Joint Report
- APD Training Academy Review and Strategic Plan

Interviews

To further examine the current APD institutional culture, JJC conducted interviews with individuals and small groups of internal and external stakeholders. These groups included civilian and sworn staff, affinity groups, the Office of Police Oversight, the OOE, and community members. It should be noted that throughout this report, where possible, the comments of interviewees are verbatim. However, because sessions were not recorded, some verbiage may have been missed. Additionally, when the interviewee/respondent could be identified by their comments, those comments were summarized to maintain the confidentiality of the process.

APD Climate Assessment Survey

To further assess the current APD culture about race and equity, both civilian and sworn staff completed a racial equity assessment. The entire survey can be found in Appendix A and specific responses are provided in the appropriate sections of this report.

"A Groundwater Analysis of Racial Inequities" Training

JJC conducted a two-day Groundwater Analysis workshop for APD sworn and civilian leadership, representatives of the equity office, and members of the community on September 24-25, 2020 (Appendix C). JJC pre- and post-training surveys and an evaluation were completed by participants. The initial evaluation responses from many participants were that "this is the best training we have ever had" and post-training surveys confirm a significant and positive shift in their understanding of institutional and structural racism and the impact on the racial inequities that exist within APD culture. Complete analysis of participants' responses on the surveys and evaluation are provided in Appendix D this report.

Analytical Framework—Texas Model for Addressing Racial Disproportionality and Disparities (2010)

Developed in 2010, the Texas Model for Addressing Racial Disproportionality and Disparities (Texas Model) has been found to effectively reduce racial inequities and improve outcomes for all populations in Texas (James, et. al., 2020). The Texas Model, described below, serves as the analytical framework for the JJC APD recommendations in this report.

- Data-driven strategies: regularly collect, research, analyze, and evaluate data in line with a racial equity approach
- Leadership development: grow both systems and community leaders that are courageous and grounded in a racial equity approach
- Culturally competent workforce: develop workforce that reviews and examines its work through an anti-racist and humanistic lens
- Community engagement: recognize strengths of grass roots community, hear its ideas, and include it throughout process
- Cross systems collaboration: share data, training, and dialogue with systems, institutions, and agencies that serve the same populations
- Training defined by anti-racist principles: train ourselves and partners in principles that ensure we work at cultural and institutional levels
- An understanding of the history of institutional racism and the impact on poor communities and communities of color: develop common analysis of racism and history that led to current outcomes

Documentation Review—General Conclusions

Tatum Report

Interviews and surveys tended to support the Tatum report allegations of internal negative issues at APD regarding race, gender, and sexual orientation. Interviewees regarded the handling of the report as generating a lack of trust and a view that specific action would not be taken to remediate the problems. Survey data indicated that African Americans were less satisfied

with the workplace climate related to promotion, complaints, and fairness than Hispanics/Latinxs and Whites. Women were more dissatisfied than men along these survey dimensions.

Police Profiling

National and local data indicate that a higher percentage of African Americans, and Latinxs were stopped, cited, arrested, and searched than Whites, even when other factors were considered (e.g., visibility of occupant). It is also on the rise. Three reports responding to the profiling data were reviewed. This, as well as interviews, and survey data on attitudes toward race, gender, and sexual orientation converged to paint a picture of an institutional culture that lacks accountability at the leadership level in responding to repeated complaints about racism, gender, and sexual orientation. Interviews with management indicated their awareness of the report findings as did community members. Survey data on attitudes toward race indicated that African Americans generally were in less agreement with APD's tolerance toward race, institutional and structural racism, non-discriminatory practices, and their ability to raise questions and provide solutions along these lines. The findings were acknowledged by the Chief of Police and his response to the recommendations in the profiling report are elaborated verbatim in Response 3 to the profiling report. We also recommend as part of the data analysis above in the Texas Model that police profiling should contain a thorough verification and clear, transparent reporting of whom they stop, and should require a more comprehensive analysis (e.g., causative factors such as poverty, race community, crime, dispatching, etc.)

Use of Force

The sources of information reviewed converge on use of force being, in part, racial. The 2016 Austin data clearly show that force and force severity is disproportionately used on African Americans, even when other neighborhood demographic characteristics such as poverty and crime are considered. National data on police shootings show that African American men and women, and Latino men and Latina women are far more likely to be killed than White men and women. APD reported twelve cases with Officer involved shootings for the year, with five ending in fatalities. All five were minorities. The survey indicated that most respondents are aware of the police reports contained in this document, including profiling and the use of force. Interviewees suggested more consistent use of body cameras and training that focuses on examining socialized attitudes and assumptions that have led to fear on the part of the police to communities of color. Recommendations included greater specification of force and shooting incidents in reports (to include the mentally ill) and increased training on de-escalation.

Police Training

The report on training by Dr. Villanueva was consistent with the survey in this report as were the interview comments. These lined up with national information. Weaknesses were found throughout the system and included the structure, culture, curriculum, and teaching effectiveness. The paramilitary format and less attention to different learning styles and community policing were found to lead to greater attrition. Moving from a warrior mindset to a guardian mindset was one of the stronger recommendations as was more diverse recruiting and greater discussion on the criteria for rejection (e.g., credit scores, financial status). These sentiments were echoed in interviews along with the need for resolving complaints by recruits, better mental health and trauma training, improved recruitment of more officers of color and women (national data also reflect this), diversity of instructors and materials presented, more information on institutional/structural racism, mentorship, and developing a better career path for recruits. Recommendations included transformation to an adult learning model, more attention and awareness of racial issues, and community placements for cadets to help build relationships in the community.

Community Policing

National data, local interviews and survey data all confirm that community policing in Austin could be improved. In particular, the information suggests that the community itself should have a much more active role in building a partnership and working in collaboration with the police in their communities. The national data suggest what community policing could be, how it could affect legitimacy, and satisfaction on all participants and even crime. However, there are three obstacles that impede these goals: (1) the lack of time on the part of the police and lack of trust in them, (2) the lack of empowerment of the marginalized communities to have a true partnership with the police, and (3) over-policing these communities. African American survey

respondents were less likely to endorse the current effectiveness of community policing than Whites or Hispanics/Latinxs.

Recommendations

The following JJC recommendations outline the proposed APD strategies to reduce and ultimately eliminate racial inequities, institutional racism, including gender and sexual orientation within its systems and improve outcomes for all populations.

Data Driven Strategies

- Examine data on the attrition rates of Blacks and develop new strategies for recruitment and retention.
- Use data to inform and obtain input from internal and external stakeholders to develop a new and bold out of the box community policing model in a real community engagement process.
- Assess the capacity of new and existing staff to examine old attitudes, assumptions, and stereotypes about race, gender, and sexual orientation.
- Create a clearly defined roadmap with appropriate metrics, benchmarks, and milestones that define and gauge progress.
- Verify that police profiling ensures clear and transparent reporting of whom they stop and undergo a more comprehensive analysis (e.g., causative factors such as poverty, race, community, crime, dispatching, etc.).

Leadership Development

- Demonstrate a higher level of accountability for creating a visible anti-racist institutional culture at all levels of leadership within APD.
- Take steps to create a short-term career ladder to hire/promote a critical mass of African Americans in leadership positions, including Commanders and Assistant Chiefs.
- Require representatives from the executive team, including internal affairs, the union, and all affinity groups to participate in regular and ongoing leadership development sessions to intentionally expand their racial equity lens and build their capacity to contribute to reducing inequities and improving outcomes for all.
- Review employment policies and practices through a racial equity lens, especially as they relate to promotions, transfers, and hiring disqualifiers. For example, consider allowing second chances for bad credit, eviction, and so forth.
- Include in the field training officers program opportunities to ensure that new officers transfer their academy training to the field regarding racial equity. For example, explore including "ride-alongs" in the community as a part of the academy training.

Culturally Competent Workforce

- Add racial equity training (Groundwater Analysis) to (a) supervisor training class; (b) the 40-hour officer re-certification class; (c) academy instructor training; and (d) existing cadet academy diversity training. **The Groundwater Analysis training is TCOLE approved for credit for diversity training.**
- Utilize the Groundwater Analysis workshop for racial equity training with leadership and staff at all levels that includes a focus on understanding institutional and structural racism that has led to socialized attitudes and assumptions resulting in fear on the part of the police in communities of color and leading to more arrests, shootings, and fatalities.
- Develop a timeline for training all APD staff and special units in the Groundwater Analysis.

Community Engagement: a four staged process

- Implement the JJC Community Engagement Model (Appendix B).
- Develop, in collaboration with APD and TPOA, a mentoring program for African American cadet populations who have been impacted by institutional and structural racism.
- Invite individuals and community groups no longer engaged with APD back to the table.
- Demonstrate transparency in regularly communicating with internal and external stakeholders.
- Develop specific strategies to hear voices from all segments of the community, e.g. homeless, LGBTQ(IA+), inclusive of black trans women.

Cross Systems Collaboration

- Collaborate with City of Austin's departments and other systems that are making decisions that impact APD's work, e.g. education, housing, health/mental health, CPS, and financial institutions.
- Develop strategies that result in optimal collective impact on internal and external communities.
- Convene an information sharing summit that includes

all of the various groups that are working to develop plans that impact APD e.g. Reimagine Austin.

Training Defined by Anti-Racist Principles

- Develop a formalized process for all new cadets to engage with the communities that experience the most disparate treatment in relationships with APD, as part of their training.
- Make it clear on the front end of hiring and throughout the system that there is zero tolerance for racism.
- Examine and remove any materials, videos, etc. that stereotype Black men as being more criminal.

An Understanding of the History of Institutional Racism and the Impact on Poor Communities and Communities of Color

- Develop processes during ongoing JJC strategic planning sessions to monitor, measure, evaluate, and make visible, the strategies for addressing the long history of racism that has continued to create and perpetuate less than desirable outcomes for internal and external stakeholders.
- Apply a deeper awareness and sensitivity to Black culture in the hiring process.
- Develop strategies to eliminate excessive use of force while at the same time considering the common goal of APD's desire for officers to go home after every shift, and the community's desire for their loved ones to come home after being stopped by the police.
- Use the true history of policing to raise the awareness of all APD officers and staff about the lingering effects of racism.

Quick Wins

1. Circulate an agency-wide communication from the Chief utilizing the consultant's report as a vehicle for opening lines of internal communication, acknowledging mistakes, and making the commitment to lead the work of creating an anti-racist institutional culture in APD. (This will be ongoing, but it can start right away.)
2. Provide Groundwater Analysis workshop to APD recruiters and training officers in advance of the next cadet class.
3. Based on positive response, prioritize Groundwater Analysis training at all levels of APD, with a specific focus on those areas with the greatest need for immediate training, based on the very positive response to the recent workshop.
4. Identify in collaboration with APD communications, various opportunities to share and discuss this report with the community and obtain their feedback on the recommended strategies.
5. Begin planning for a specific community engagement initiative with residents of a Patrol Sector to be identified with input from community stakeholders, assigned officers, and Affinity Groups such as TPOA, that will focus on building trust and opportunities for a new and effective model of community policing
6. Incorporate recommended strategies for working with TPOA into this framework to ensure consistency in working from an analysis of institutional racism and through a racial equity lens.
7. Engage and utilize the voices of community members involved in the Groundwater Analysis workshop, debrief, and strategy session to work with APD in regaining the trust of the community and to ensure their ideas do not get lost in the process.

DOCUMENTATION REVIEW AND ANALYSIS

The Tatum Report

Review of the Report

The Tatum Law firm was hired by the City Manager (City of Austin) on November 15, 2019 to conduct an independent investigation as to the validity of allegations of discrimination and misconduct *within* the Austin Police Department. Three of the complaints filed with the Office of Police Oversight were anonymous and two of the allegations were filed by Commander Jason Dusterhoft.

The Tatum Report listed the following complaints and allegations to be investigated:

> The first anonymous complaint was filed against Assistant Chief Newsom and Chief Manley. It alleged that Assistant Chief Newsom had been using the "n---" word to describe African Americans for over a decade and his conduct was evidenced by text exchanges which Chief Manley was aware of. There was also an amendment to this anonymous complaint filed alleging that Assistant Chief Newsom was notified of the complaint against him for racist behavior before the investigation began, allowing him to retire and receive full retirement pay. Next, an anonymous complaint was filed regarding an anti-gay environment within APD, alleging Chief Manley supported the anti-gay mindset of Assistant Chief Gay in advocating the use of gay conversion therapy. Last, allegations were raised by Commander Jason Dusterhoft during his arbitration hearing which includes twelve instances of criminal or APD violations (7 allegations and 5 examples of disparate treatment or attempted retaliation) which he states were reported by him directly and to Assistant City Manager Rey Arellano. He also filed a complaint alleging failure to comply with subpoenas issued to Chief Manley, Chief of Staff Gay, Assistant Chief Newsom, and Assistant Chief Chacon for testimony or production of documents related to his arbitration hearing.

Ms. Tatum was not able to substantiate these allegations, and after numerous attempts and interviews, she was unable to obtain documents and evidence pertaining to the complaints under investigation. Some evidence was outside of the 180 Day rule and therefore not applicable and other documents were not able to be located by APD. Among the 74 interviews performed by Tatum Law, twenty of those individuals asked to be anonymous. There were several conclusions made by Ms. Tatum's team after conducting these interviews. One, there was a high level of fear of retaliation among active duty officers and unsworn staff. Second, there was an exceptionally low degree of expectation by these individuals that any investigation would reveal the truth based on past experiences. Last, there were doubts to the sincerity of City leadership to enforce changes necessary for APD to improve practices.

The theme of retaliation is evident throughout the interviews. These interviews also exposed how inconsistently complaints and officer misconduct are handled. The current policy allows for these matters to be resolved or dealt with in several different ways by different departments. Currently, the complaints or misconduct have the option to be handled by a direct Supervisor, Assistant Chief, Chief of Police, or Internal Affairs. Tatum Law advised that a "more uniform application of policy would result in more predictable and suitable outcomes." This will also help to prevent a discriminatory process in relation to disciplinary action. As an alternative, Tatum Law suggests APD address these reports through several avenues, including improved education, training, restructuring, re-assignment, and removal if necessary. In relation to the way officer conduct is handled, Tatum Law identified two policies in need of possible reform, the 180 Day Rule and the Meet and Confer Agreement.

Some other areas for improvement were pointed out through challenges faced by Tatum Law during their investigation. Another area where improvement was needed was with the Department's file management and retention system. Many documents requested in the investigation were not able to be located by APD. Also, Tatum Law suggests that "further training as it pertains to management training, and unconscious bias, racial, and cultural sensitivity training would be helpful to improve the current culture in the Department." Also, developing policies around the use of department issued property and equipment is necessary. A good start would be by implementing an electronic communications Code of Conduct and possibly an off duty social media policy. Finally, to provide further insight into the challenges that were presented from this investigation, Tatum

Law suggests it would be useful to gather more information to help identify trends within APD. Tatum Law feels this information "will enable City leadership to continue with a more focused direction of its mission of undoing racism as it pertains to APD."

Overview of the Report Recommendations

- Reevaluate the 180 Day Rule
- Reevaluate the Meet and Confer Policy
- Train all personnel on awareness of cultural sensitivities and racism
- Improve file management and retention
- Establish an electronic communications code of conduct
- Apply more uniform policies surrounding disciplinary actions

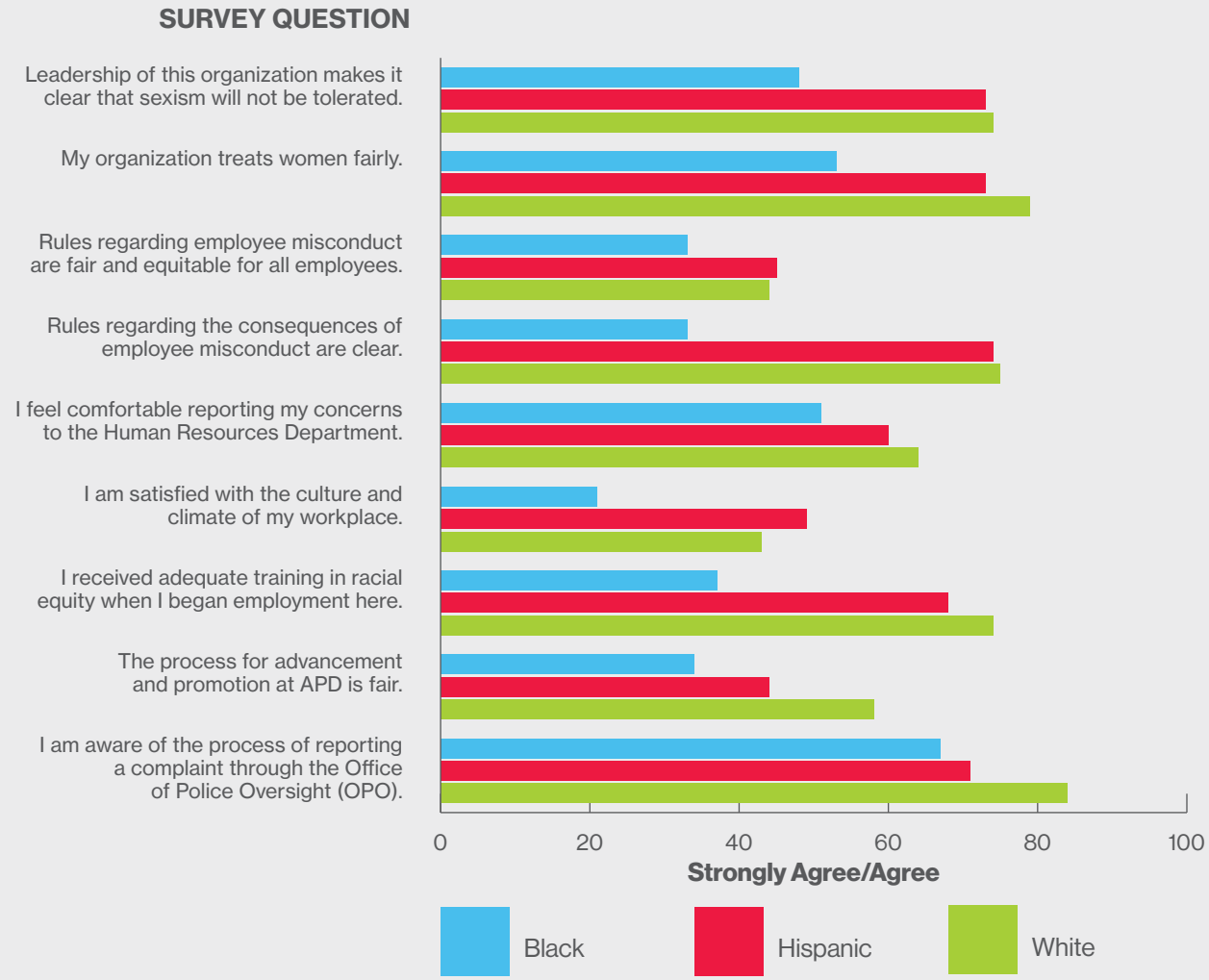
Key Observations/Comments from Interviews

- Through numerous individual and group interviews, JJC confirmed the Tatum report finding that some officers were reluctant to respond to consultants' questions. But others were transparent and forthcoming. Those who spoke freely opined that others were reluctant because they have seen no results after speaking with previous consultants and completing numerous surveys.
- Several high-ranking officers also expressed frustration with the Tatum report because they would have preferred more specific examples and strategies for addressing the disparities described.
- Throughout the Tatum interviews, reports by various ranking officers of different genders and races revealed that racist and sexist name calling, and the use of derogatory terms is persistent within the department. Many also expressed frustration that when reports of discrimination are made, there is no action, or they are held in excess for 180 days and then disregarded. Both officers and civilian staff interviewed expressed concern that complaints filed are handled unfairly and almost certainly comes with retaliation.
- The vast majority of JJC interviewees agreed with the Tatum findings listed above, which resulted in a lack of trust at APD, both internally and in terms of public image in the community. Many cited poor communications among employees as a contributing factor to mistrust. Some also said that employees who talked to the media not only lacked support but were victims of retaliation. In addition, a "code of silence" after the Newsome incident contributed to low morale. This mistrust has led to a view that the "Fifth Floor" supports the Union more than sworn officers.
- The Tatum Report recommended that the Department's file management and retention system be improved.
- When Tatum Law requested documents regarding evidence of disciplinary action, they were told they could not be found. With maintaining a more consistent file system the City could conduct audits assuring compliance with disciplinary policies.
- They felt that racial incidents were "swept under the rug" due to a poor management system. Others noted that the file management system is extremely antiquated; that paper files are kept in filing cabinets, and that files are not separated by race.
- Technology, such as more advanced forensics, is needed and should stay with APD because some aspects are only available to officers.
- Other systems that are automated do not talk to each other, making file retrieval cumbersome and time-consuming at best, especially when files are needed from multiple systems.
- Chief Manley took the lead on responding to the Tatum report, even though many of the charges were against him. The response and recommendations were pushed to the side or forgotten about. They didn't talk to HR.
- To achieve the cultural change necessary in the present climate, APD leadership at the top must have the political acumen, courage, strength, and awareness to get it done.
- The current structure of Human Resources is multilayered and limits effectiveness. One area needing improvement is more of a focus on what an individual should do if treated unfairly. Re-aligning divisions does nothing to address bias and racism.
- The Tatum report noted lack of defined professional development or career path.
- Some indicated that it is difficult for civilians and women in law enforcement.
- Women feel ignored at meetings and left out. As a civilian, they're treated as lower level employees. They feel like they are not part of the team.

Survey Data

There are eight survey questions that address directly or indirectly, issues related to the Tatum report. They are shown in the figure below. The responses range from an average of 2.86 to 4.06 on a five-point scale. (See Appendix A)

Figure 1: Internal Organizational Issues by Race/Ethnicity



Survey responses reflect that the experiences of White and Hispanic men are mostly positive and differ significantly from that of Blacks and Women.

Most notably, shown in Figure 1, Hispanic/Latinx and White respondents report more agreement with the climate of the workplace, equity training, fair advancement and promotion, the process for advancement, comfort reporting complaints and concerns, and the fairness of the rules than African American respondents. It is noteworthy that females do not think the organization treats women fairly compared to males. Moreover, females have somewhat less agreement with all internal organizational issues than men

These difference as they relate to the experiences of women and Blacks in APD, align with the overall findings in this report ..

The Joint Report on Racial Profiling, Responses and National Data

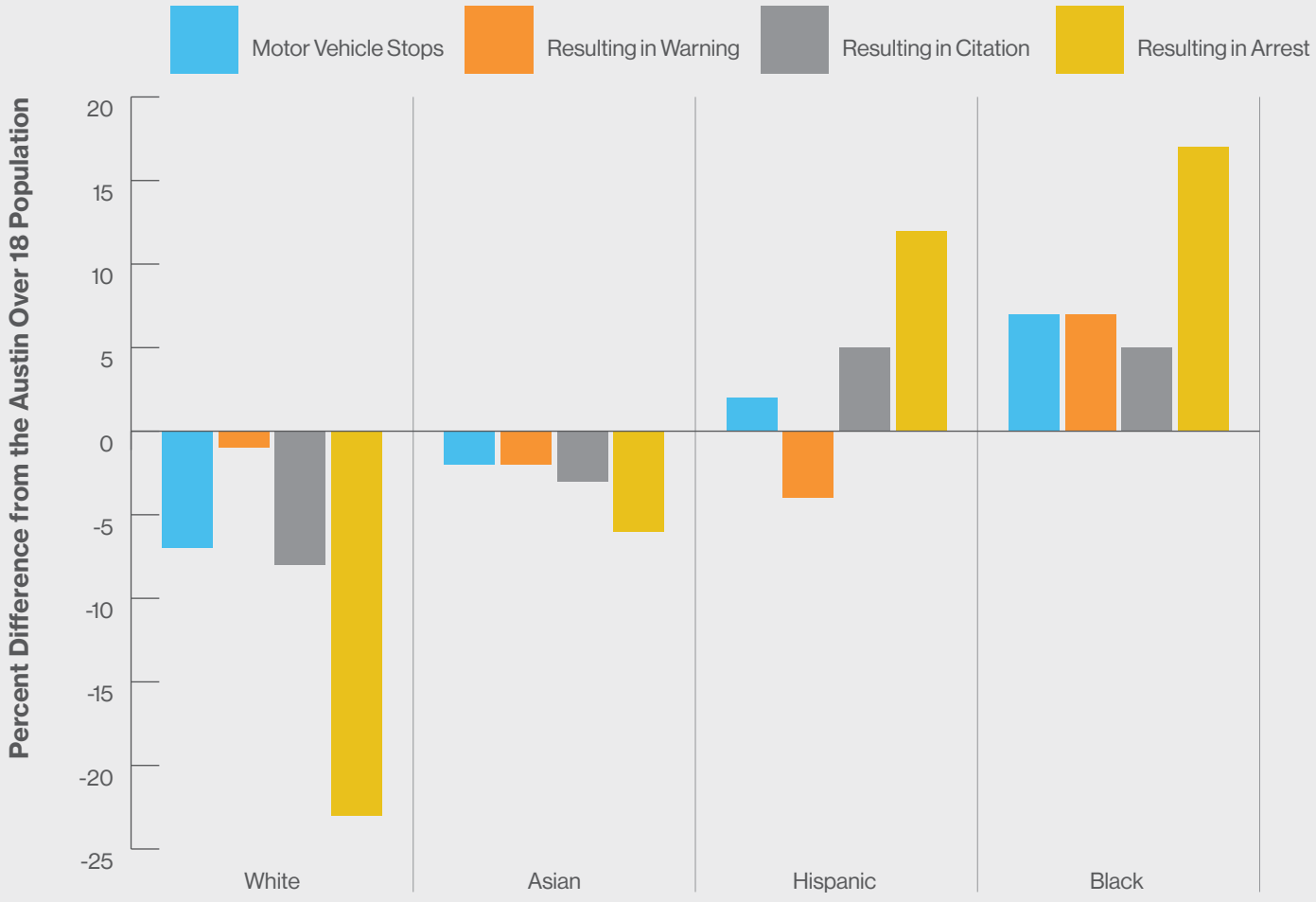
Austin Data

The Office of Police Oversight, the Office of Innovation and Equity Office issued a joint report on racial profiling (2020). That report contained information about motor vehicle stops, arrests, citations, warnings, and searches. The data were broken down by race/ethnicity and for the years 2015 to 2018. The figure above displays a summary of the data for 2018 because, with one exception, (fewer warnings for Hispanics/Latinxs) the pattern over the years is quite similar. Relative to their percentages in the driving age population, a higher percentage of African American drivers receive a higher percentage of stops, warnings, citations, and arrests than White drivers. They are followed by Hispanics/

Latinxs and Asians, relative to Whites. Warnings generally occur more to the West side of Austin and arrests more to the East side.

The telling difference between warnings vs. arrests in West and East Austin could suggest to some, a difference in driving habits of the minority communities on the East side. However, national data on differences in traffic stops at night vs. daytime suggests that the warning data and the very large differences in arrests between African Americans, and Hispanics/Latinxs compared to Whites are race related. The Austin data itself tell a similar story. Discretionary vs. non-discretionary stops resulting in citations or arrest in Austin suggests racial profiling (Goff, Obermark, LaVigne, Yahner, & Geller, 2016). Findings (shown in "Racial Profiling A") indicate higher officer discretionary stops and arrests for African American than White or Hispanic/Latinx drivers. Finally, data on stops, searches and resulting search/findings suggest race is a significant factor. Findings from APD's Racial Profiling Report indicate that traffic stops resulting in searches are higher for African Americans and Hispanics/Latinxs than Whites, relative to the percent driving age. Further the 4% difference in search/finding rates between African Americans and Whites does not explain the 41% difference in searches. Though less pronounced, the findings are similar for Hispanics/Latinxs vs.

Racial Profiling A: 2018 Percent of Racial/Ethnic Groups Profiled in Relation to Percentage in Population



*Data from Joint Report on Racial Profiling Charts 1, 2, 3 & 4

Whites. In addition, the Austin data from Goff and his colleagues (2016) indicate a higher search rate for African Americans then young Hispanics/Latinxs relative to Whites (more so when the race was known) but similar search/finding rates for the three groups.

As a final note in this profiling section we show below in the figure that traffic stops have risen over the years for African Americans and Hispanics/Latinxs.

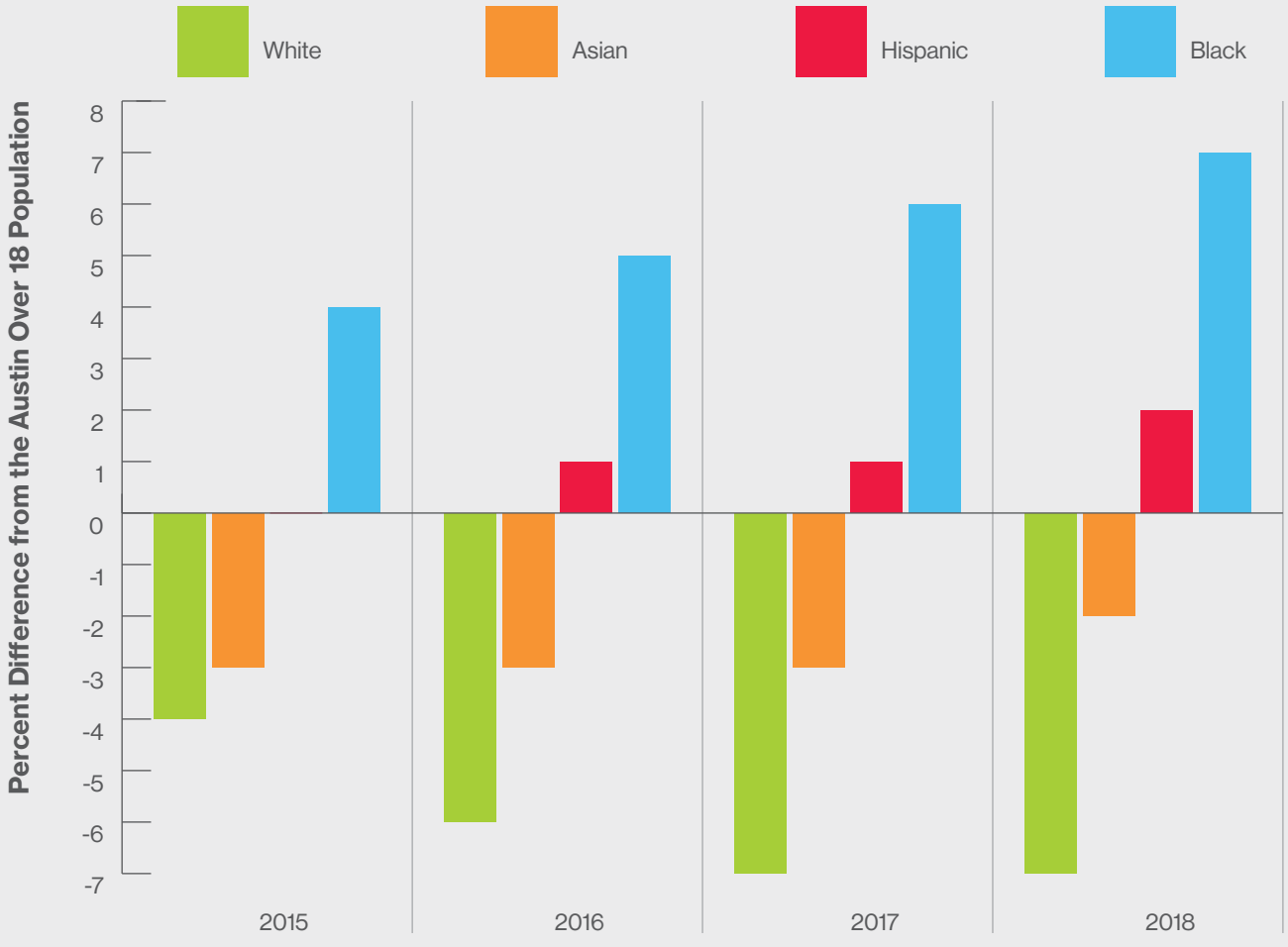
Overview of Recommendations

- Acknowledge that racial disparity exists and is worsening.
- Gain community trust and decrease racial disparity in all aspects of the report (traffic stops, arrests, citations, searches, use of force) yearly to arrive at zero racial disparity by 2023.

National Data

A large nationwide study is consistent with the Austin data and provides more context. Pierson and his colleagues (2020) found that African Americans were more likely to be pulled over for a traffic stop than Whites (over 100 million stops were assessed), yet this difference disappeared at night (the darker the sky, the less the disparity). Further, searches occurred less often for Whites, though they were more likely to be found with drugs than African Americans and Hispanics/Latinxs. Interestingly, where and when marijuana

Racial Profiling B: Traffic Stops by Race/Ethnicity 2015-2018



Data from Joint Report on Racial Profiling Report Chart 1

had been legalized for recreational use, the search threshold was higher for Whites. Other studies have found similar results for stops, searches, results of searches, and arrests (see references at the end for the original article or the policing and profiling link in a Balco 2020 article in the Washington Post for more information).

Key Observations/Comments from Interviews

- Most executive staff/management at APD are aware of the racial profiling data and acknowledged these disparities existed and are worsening.
- A small number of officers indicated that they had not seen instances of racism at APD and when asked about profiling specifically, thought that officers making traffic stops were doing so appropriately.
- In recruiting, there are those who look for ways to disqualify people. They take pride in ruling them out. They are comfortable making disparaging comments about women and Blacks. This has been going on for a long time.
- See APD Response to Racial Profiling below for citizen responses and more APD responses.

Responses to the Report

Response 1

January 14, 2020, Police Chief Manley submitted to City Manager Cronk, a memorandum that "unequivocally acknowledged that racial disparities are prevalent throughout many aspects of our City, including police enforcement actions."

This document listed the steps that had been taken to address the disparities within APD's purview over the last five years. Five of these steps addressed broad categories of collaborative improved analyses of disparity data, the use of available analytic frameworks and technologies (e.g., body cameras), and obtaining feedback from the community. Three addressed training, noting the use of implicit bias training for new recruits, hiring an expert to review the training, and improving diverse recruiting. Four addressed police profiling, improved policies concerning the use of force de-escalation and traffic enforcement. Three steps also addressed publishing an annual profiling report, contracting with an expert on racial profiling, the reduction of discretionary arrests, and the monthly workgroup with community members to explore disparities and enforcement actions.

Response 2

April 2, 2020, City Manager Crook responded to the Director of Police Oversight, Muscadin, Chief Innovation Officer O'Connor, and Chief Equity Officer, Oaks. The Memorandum and Power Point was in regards to gathering community input on the January 2020 Joint Report: Analysis of APD Racial Profiling Data. It was attended by 56 community members, 20 city staff, and 10 APD officers. The event began with a panel and presentation of the report by the authors and Chief Manley in a question and answer format. Following this, attendees were divided into five small groups for a facilitated discussion.

In general, community members were not surprised by the findings in the report because they fit with their experiences with the police in Austin. But they were surprised, discouraged, and saddened by the increasing disparity trend over the years in the report (see Racial Profiling B above). They also asked for additional data to help illuminate the reasons for the outcomes in the report and additional demographic information (a full listing of community feedback can be found by clicking the link on page 1 of the memorandum and by viewing the Power Point presentation associated with it). The community addressed several ways in which they wanted APD accountability: (1) **Acknowledgment** of the problem without being defensive, (2) **Commitment and Action** to make a change in accountability with some urgency, (3) **Structural Change and Community Decision Making,** specifically the need for community involvement in decision making, changing policy, a citizen's panel, and evaluating individual officers, (4) **APD Organizational Changes** aimed at holding leaders and individual officers accountable by having a monitoring system and real consequences for their actions, (5) **Budget** consequences if steps are not taken to address the racial disparities in the report, and (6) **Increased Transparency** from APD, the Office of Police Oversight, and the City of Austin.

Community members also provided input on training processes, the impact of mental health on the community, the importance of community involvement in decision making, and the need to prioritize the expertise of those who had lived the experience of police profiling. Finally, they requested actionable next steps for implementation and accountability.

This same memorandum requested that APD provide a written public response, acknowledge the existence of racial disparities, and align recommendations with community feedback.

They are as follows (Exploring best practices and training will be addressed in subsequent sections of this report.):

- Acknowledge that racial disparity exists and is worsening.
- Acknowledge that the methodology previously used omitted the context of proportionality and therefore was an incomplete analysis. This resulted in a perception that a trend of disparity did not exist.
- Acknowledge that race plays a major role in who is stopped by the police, searched, and for whom discretion is used favorably or unfavorably.

Response 3

April 22, 2020, Chief of Police Manley provided a response to recommendations through a detailed memorandum. The responses to recommendations 1-7 regarding racial profiling is reported in full below. The responses to recommendations 8-14 are more related to training and are reported in that section.

The purpose of this memorandum is to provide responses to the recommendations outlined in the joint report, as requested by the members of the Judicial Committee during its meeting on February 10, 2020. The Department's initial response, as well as the studies and reports referenced therein, provides additional context to this memorandum.

- *Recommendation 1: Acknowledge that racial disparity exists and is worsening.*

  The Austin Police Department consistently and unequivocally acknowledges that racial disparities exist throughout aspects of our city, including police enforcement actions. Accordingly, the Department has readily taken many steps to address the disparities within APD's purview over the past five years, as detailed in the January 14, 2020 response. Racial disparities have persisted despite these efforts, and the widening of certain gaps has raised additional concerns that demand further attention and analysis.

- *Recommendation 2: Acknowledge that the methodology previously used omitted the context of proportionality and therefore was an incomplete analysis. This resulted in a perception that a trend of disparity did not exist.*

  The primary purpose of APD's annual racial profiling report is to comply with state legislative mandates that require the reporting of specific data. Proportionality assessments are not compulsory. However, recognizing the importance of such information, APD collaborated with the Center for Policing Equity to conduct a comprehensive analysis of the racial disparities manifested in the Department's enforcement actions. The report was the first to apply the National Justice Database's independent analytic framework to police data made available through President Obama's Police Data Initiative, Measuring Fairness in the Austin Police Department. That report is posted alongside the Department's racial profiling reports on the City's website.

- *Recommendation 3: Acknowledge that race plays a major role in who we stop, search, and for whom we use discretion favorably.*

  The Department acknowledges that the outcomes of many police activities result in racial disparities. Additional data and analysis are necessary to determine how officer discretion, Departmental procedures, and societal factors contribute to these disproportionalities.

- *Recommendation 4: To gain community trust, proportional racial disparity in motor vehicle stops, arrests, searches, field observations, warnings, and citations should be zero.*

  The Department is committed to reducing racial disparities to zero, particularly disparities that are the result of officer discretion or inefficient police practices.

- *Recommendation 5: The official comprehensive analysis of racial profiling shall be conducted and released by the City of Austin Office of Police Oversight, although state-mandated reporting may continue under the purview of the Chief.*

  The Department will continue to release its state-mandated racial profiling report on an annual basis and welcomes the Office of Police Oversight's independent analysis and insight, in the manner the City Manager deems necessary and appropriate.

- *Recommendation 6: In order to uphold data integrity, accuracy, and transparency, officers should verify the racial and ethnic*

identity with people they stop. The verified data should be documented in officer reports and be published in the Racial Profiling data sets on the City's Open Data Portal.

In accordance with departmental procedures, Officers are required to document the race and ethnicity of the individuals they stop. The City has contracted with Dr. Alex Del Carmen, an expert on racial profiling and discrimination, to regularly audit the Department's racial profiling data to ensure accuracy in data collection and reporting. The traffic stop data, which includes race, is published in the racial profiling datasets on the City's Open Data Portal.

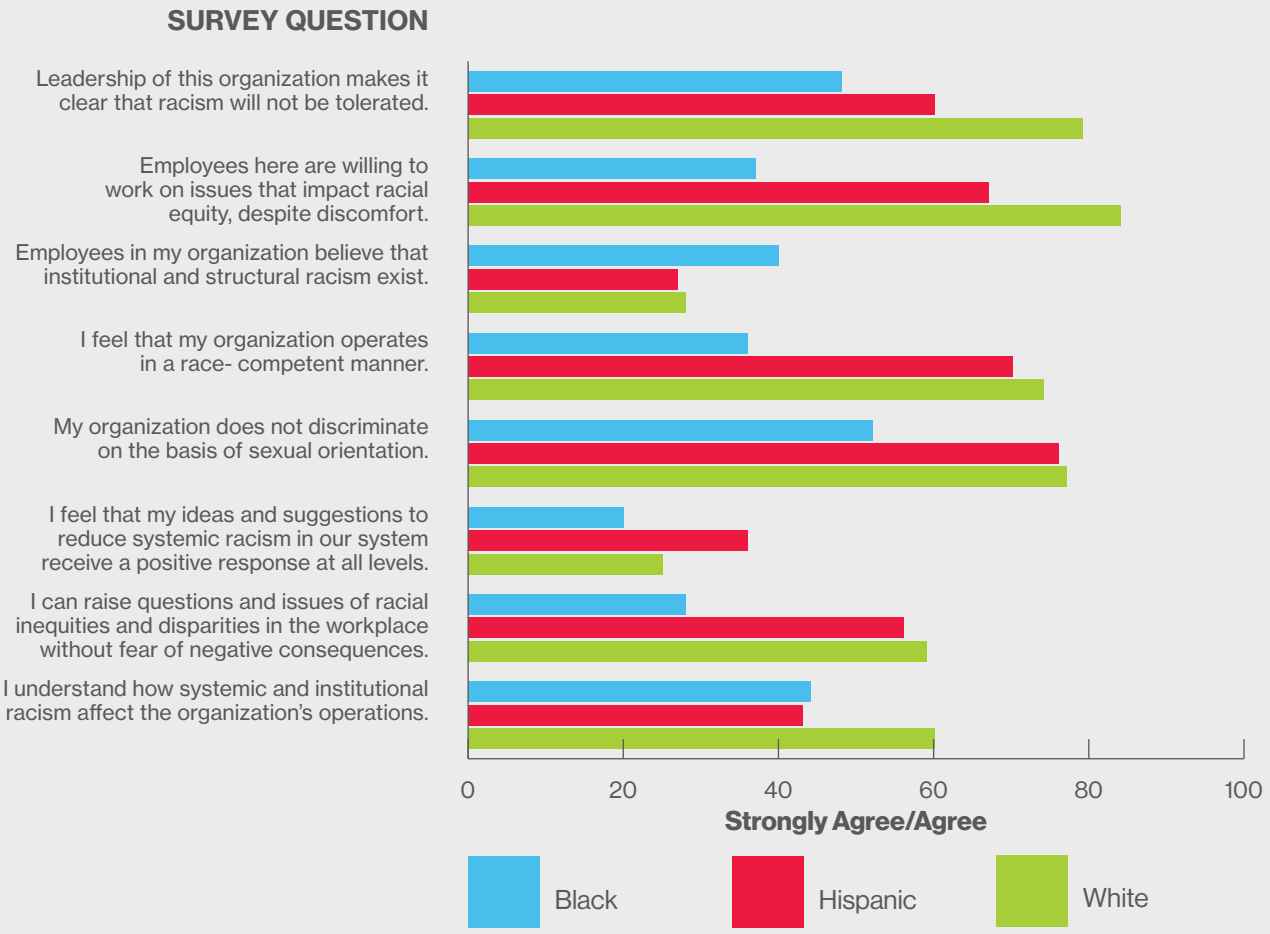
- *Recommendation 7: Analyze and report on the operational inefficiencies and costs that disproportionate racial disparities create by the second quarter of the fiscal year 2020 and provide to the City Manager and Council.*

Currently, the Department is not staffed or equipped to quantify and analyze this data but would readily collaborate with the City Auditor's office or another entity, at the direction of the City Manager.

Survey Data

The results of the questions on attitudes toward race and profiling showed generally positive results (averages ranged from 2.75 to 4.08 on a five-point scale. See Appendix A). However, when broken down by race and ethnicity, differences emerged and are

Figure 2: Attitudes Toward Race by Race/Ethnicity



shown in Figure 2. African Americans, compared to Hispanics/Latinxs and Whites, had the least agreement on every question concerning APD's understanding of how institutional racism affects the organization, feeling free to raise issues concerning racism without consequences, getting a positive response to their ideas and concerns, discrimination on the basis of sexual orientation, the organization operating in a race conscience manner, willingness to work on racial issues, and the tolerance of the organization toward racism. Women showed the same pattern of less agreement relative to men. Here again, these findings for African Americans and Women reflect the overall findings of this Report.

An additional observation from the survey is that across race and ethnicity, a low number of staff felt their ideas and suggestions for reducing systemic racism at APD were received positively. African Americans also responded higher to the question regarding employee beliefs that institutional and structural racism exist in APD.

Police Use of Force and Shootings

Austin Data

Goff and his colleagues (2016) also report data on use of force. The data indicate that the incident rate of use of force is greater for African Americans than Hispanics/Latinxs or Whites. The rate per 1,000 citizens ranges between .35 and .25 over the year for African Americans and below .10 for Hispanics/Latinxs and Whites over the year. The findings for the rates of use of force severity are also disparate between African Americans and Hispanics/Latinxs and Whites.

Of even more importance is that these researchers included neighborhood and demographic characteristics, crime rate, income, and percentage of African Americans and Hispanics/Latinxs in these neighborhoods in the models. Findings showed that residents in Austin neighborhoods with a higher percentage of African American or Hispanic/Latinx residents, those in poverty, and neighborhoods with higher crime rates, had disproportionate force and severity of force used upon them. When these possibilities other than race were adjusted statistically, African American and Hispanic/Latinx residents still experienced higher rates of use of force. The Austin Police Departments Research and Planning Unit (2017) also produced data on use of force (along with other measures). In this case as well, when the use of force from 2014 to 2016 by race and ethnicity was compared to the population, African Americans and Hispanics/Latinxs had disproportionate force used upon them relative to Whites. Control variables such as crime, poverty and neighborhood were not used. Officer involved shootings (OIS) do not occur frequently within APD (Officer Involved Shooting Report, 2018). In 2018 there were twelve incidents of officer involved shootings. Among the 12 shootings, over half were found to have a mental illness component. Five of the twelve (OIS) incidents resulted in fatalities. All five suspects were African Americans or Hispanics/Latinxs.

National Data

Police shootings and use of force evidence is similar nationally. Edwards, Lee and Esposito (2019) report in the Proceedings of the National Academy of Sciences that the police shooting database indicates..."that between 2013 and 2018, Black men were about 2.5 times more likely than White men to be killed by police, and that Black men have a 1-in-1,000 chance of dying at the hands of police. Black women were 1.4 more times likely to be killed than White women. Latino men were 1.3 to 1.4 times more likely to be killed than White men. Latina women were between 1.2 percent and 2.3 percent less likely to be killed than White women." Further, several findings in different cities in the U.S. have found that force is more likely to be used against African Americans than Whites.

Key Observations/Comments from Interviews on Use of Force

- No accountability is required for not using body cams.
- The department has an "us versus them" mentality and thinks of some communities as adversarial.

Recommendations on Police Shootings and the Use of Force by the Office of Police Oversight

- Increase the OPO access to OIS shooting incident data.
- Publish annual reports related to OIS incidents.
- APD should acknowledge and address:
  - Number of OIS incidents involving a mental health component
  - The fact that only Blacks or Latinxs were the subject of fatalities caused by police
  - The fact that the majority of OIS incidents involved people from the Hispanic/Latinx community

  - The fact that "less lethal" force was only used in one incident prior to deadly force

- Increase education for patrol officers on de-escalation, response to resistance, and crisis intervention.
- Ensure mental health response training, policies and procedures follow best practices and address shortcomings.

Survey Data

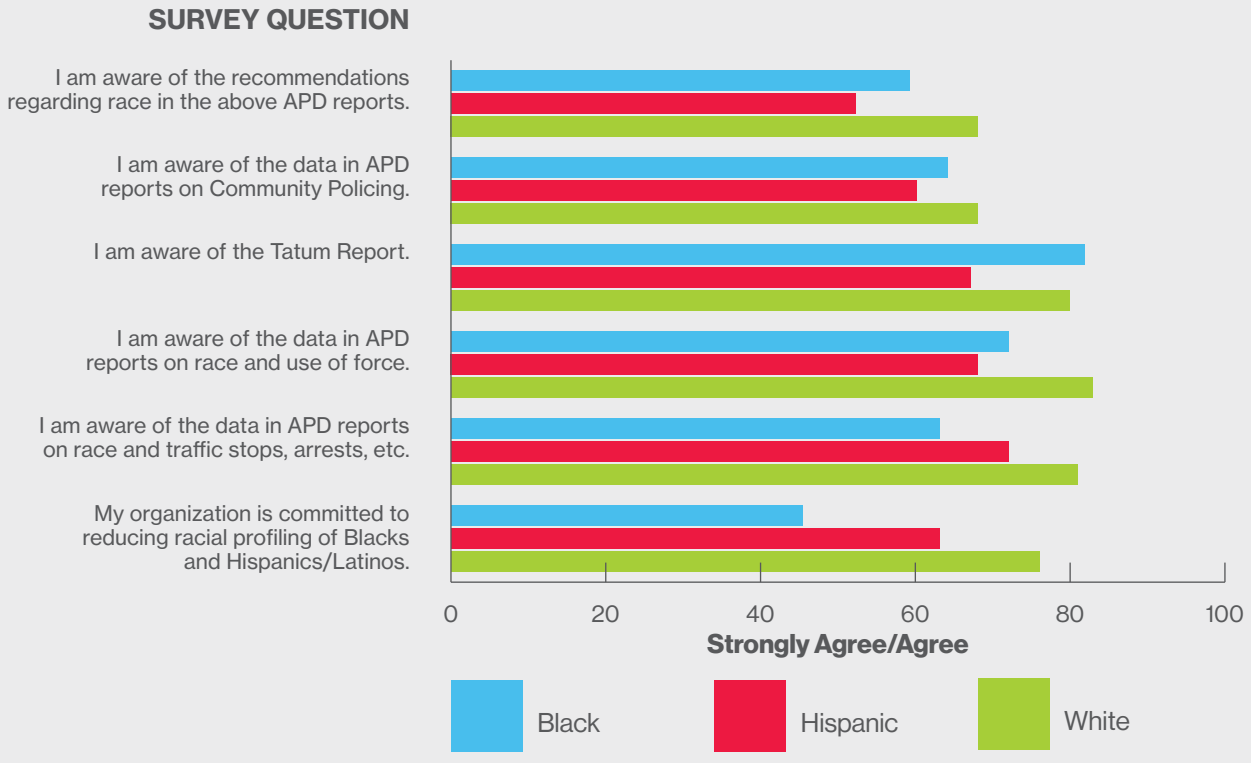
This section of the survey relates to the awareness of APD data in this report. The questions are shown in Figure 3. Generally all participants in the survey report a high level of awareness of the Tatum Report, and similar awareness of community policing. Of note is that African Americans are slightly more aware than Whites of the Tatum Report, which could speak to seeing their concerns documented in the report. They also speak to the overall findings of this Report. White respondents showed the highest level of awareness of the remaining questions shown in the graph. Finally, civilians were not as aware as sworn employees.

Police Training

Austin Data

The Training Academy is eight months long. Dr. Villanueva (2020) provides a review of the Training Academy and a framework for her analysis. It is referred to as a Strengths, Weaknesses, Opportunities and Threat analysis (SWOT). Strengths include organizational leadership, the hierarchical structure producing stability, the culture, though paramilitary, is viewed as none-the-less informal, and the movement toward more ethnic and racial diversity and inclusivity. Parts of the curriculum (currently under review) and teaching effectiveness are considered strengths as well. The diligent adherence to difficult scheduling

Figure 3: Data and Reports Awareness by Race/Ethnicity



and compliance with requirements and standards are listed as strengths. Instructors are viewed as well prepared and organized. Discussed later in this document, some findings do not coincide with the interviews that were conducted for the present report.

Weaknesses were found in the organizational structure, culture, curriculum, and teaching effectiveness as well. Process improvement is needed around a variety of areas of communication, the organization of course material, and the scheduling and course alignment. These were found to be weaknesses of the organizational structure. In the area of culture, weaknesses were noted in the paramilitary training format in that it leads to high drop-out rates, less attention to different learning styles, and inconsistency with a community policing philosophy. Diversity among the faculty and teaching methods were also noted as weaknesses and the current curriculum is being reviewed. Teaching effectiveness weaknesses were noted. Namely, trainers' job descriptions do not include any expectations of training in teaching methods or evaluations of the effectiveness of those methods. Further, resources regarding effective teaching methods are unavailable. Finally, the 80% passing standard along with related practices and procedures should be reviewed.

Opportunities include adopting an adequate Learning Management System, moving away from a paramilitary culture and warrior mindset to a more guardian view that is consistent with community policing and the value "to protect and to serve." Various types of training are suggested along these lines.

The issue of race and ethnicity in policing is regarded as a cause of concern and a number of efforts are underway to address this issue. The courses currently taught are under substantial review about content of teaching, content of materials, current scholarly literature, and effective delivery of the material. Meeting the diverse needs of both the community and the organization are paramount. Noting that women and faculty of color are under-represented in the academy, recruitment will be closely examined.

Since many of the existing courses are mandated by law, courses will be reviewed, and a series of evidenced-based practices will be included to help officers navigate encounters with community members while helping the officers build emotional regulation and strength tolerance. To that end, academy instructors will need the training, experience, and resources necessary to achieve teaching excellence.

Threats listed are (1) socio/political climate and political unrest, (2) negative police/community relations, (3) shortage of recruits, (4) economic/financial/budgetary constraints, (5) internal morale, (6) internal discord, (7) negative perceptions by the public/media, and (8) lack of real or perceived support.

National Data

The Governing data website provides data on the demographic composition of police departments in the United States. According to the data found in the reports on the site, Whites are overrepresented while African Americans and Hispanics/Latinxs are underrepresented in varying degrees in the majority of larger police departments (race and ethnicity data on this website can be reviewed city by city). Further, according to a survey by Crime and Law Enforcement (2019), women make up only 12.6 % of full-time police officers in the United States. As the President's Task Force on 21st Century Policing (2015) points out, a tolerance and understanding of these racial and ethnic groups as well as the LBGTQ community is essential to improved training (and of course, recruitment).

Dr. Villanueva Recommendations

- Transform para-military structure to Adult Learning model
- Incorporate implicit bias evaluations into recruitment process
- Increase diversity in teaching faculty
- Include simulations and role plays that pertain to difficult cultural or racial situations
- Establish a community placement opportunity for cadets to begin building relationships with community

Key Observations/Comments from Interviews Regarding Training and Advancement

There is no mechanism for cadets to complain above their Instructor/Counselor (IC) even if the IC is the person who abused them.

- Resignations/firing Black officers after training
- Insufficient mental health training
- Insufficient training on trauma-informed care

- Numerous former cadets stated that they were verbally, psychologically, and physically abused in the academy, and that they observed the same for their classmates.
- Certain cadets are targeted and pressured relentlessly, then asked to resign or be fired. In the latter case, they would likely be banned from future law enforcement jobs in the whole state.
- The academy curriculum glosses over the subject of diversity, taught by all-White instructors.
- Academy has a high level of attrition of Black cadets
- Some Black cadets are prepared, and some are under-prepared for the academic rigor of the academy. This could be a historical failure of the school educational system, resulting in an achievement gap.
- Choice of videos in training academy promotes warrior mentality
- Cadets suffer "death by Power Point" in academy
- SWOT analysis was conducted by Dr. Villanueva, but staff did not receive feedback
- Lack of community engagement during the academy
- Questionable reasons for disqualifying cadet applications: credit score; smoking weed in high school; hairstyle
- The police department has not done a very good job of awareness of the need for racial and gender equity. Beliefs such as women cannot police have permeated the department since the 1930s.
- Some would prefer officers to be recruited and or trained in psychology and empathetic understanding.
- The academy has no specific mentorship program for African Americans that mirrors the female mentorship program.
- Marketing might attract more recruits of color.
- Most officers take a substantial pay cut to teach in the academy. They lose night shift stipends, and ability to make overtime.
- Support adding the history of policing course to the academy. What APD was doing before was inadequate regarding history of policing. The curriculum is in place for the next cadet class through the University of Texas for an 8-hour class.
- They are planning to use the Beyond Diversity curriculum from the LBJ school for their diversity training (separate from history of policing class.)
- What needs to change is militaristic training
- There is a lack of a clearly defined career path
- One individual thought there was a negative reaction to Undoing Racism training by some
- There is a need to develop a formal mentoring program led by APD for African Americans
- Training for new supervisors includes HR: Policy, Workers Comp, FMLA, Annual Performance Reviews, and so forth.
- 30 sergeants and 20 corporals are currently going through supervisor training. The class is 2 weeks, with an additional accountability class. There is no specific curriculum included on data showing the racial inequities.in APD that officers going into leadership positions should be aware of.
- For the academy, the ICs are responsible for academic support if needed.
- Every officer must have 40 hours every 2 years. TCOLE will mandate some, but other hours are at the discretion of the department. Re-certification is required every two years.
- The motto of the academy is, "I am my brother's keeper." That culture ought to shift. The highest level of diversity is at the officer level and that needs to be spread throughout the agency.
- African Americans are lacking sufficient numbers in high positions to support what some interviewees called "succession planning" to help them do well on tests for promotion which Whites and Latinos have. Rather, many stated the existence of a "good old boy network" that continues the cycle of promoting White males. For example, there are no Black Commanders and only one Black Assistant Chief.
- The videos that cadets view have a disproportionate number of Black people involved in violent crime, which not only shapes the minds of White officers, but also does something to the psyche of Black and Brown people that their own people are dangerous.
- Interviewees mentioned a lack of awareness of and sensitivity to Black history and culture in the Department. There are too many recruitment disqualifiers as well. For example, they said that Black hairstyles for men and women have been disqualifying factors in the application process. Other disqualifying factors of Black candidates, such as bad credit score; having been evicted, and having smoked weed in high school should be taken into consideration as the result of intergenerational effects of economic exploitation and racial trauma.

Community Responses to Training: (From the Responses to the Joint Report on Police Profiling)

- Include implicit bias testing in the Austin Police Department hiring process.
- For current employees, require implicit bias testing and flag high-scoring officers for appropriate intervention.
- Identify and implement bias-countering policies, practices, methods, processes, and standard operating procedures to mitigate bias.
- Include the comprehensive Racial History of Policing curriculum in the cadet training academy and adapt it into required training for existing officers, at all ranks, annually.
- Follow the guidelines for racial equity training established by the Equity Office. The Equity Office and Office of Police Oversight shall be consulted for final selection of official racial equity training for officers at all ranks.
- Develop a method to provide racial equity training on an ongoing basis (a minimum of 40 hours per year) for all staff, sworn and civilian, in the department, annually, during every year of service.

Response 3

(continued from page 8. April 22, 2020, Chief of Police Manley remaining responses to recommendations in the Joint Report on Racial Profiling: these 7 remaining responses are placed here because they relate more to training)

- *Recommendation 8: Explore promising practices from Oakland and Nashville that use a scoring mechanism for disproportional behavior to identify at-risk officers and assign appropriate interventions and use in the determination of promotions.*

  The Department agrees the City should invest in sophisticated oversight tools that are more adept at identifying, flagging, and tracking at-risk officers in order to facilitate timely and effective interventions.

- *Recommendation 9: Include implicit bias testing in the Austin Police Department hiring process.*

  Based on the best available evidence from subject-matter experts on bias, the Department operates with the understanding that every applicant will have implicit biases. Therefore, the Department administers training to ensure all employees are aware of their biases, promulgates explicit policies to set clear expectations that bias-based actions are intolerable, and utilizes oversight mechanisms to identify inappropriate behavior.

- *Recommendation 10: For current employees, require Implicit Bias testing and flag high scoring officers for appropriate intervention.*

  As stated above, the Department has mechanisms in place to identify and rectify inappropriate behavior. Additionally, the Department is open to exploring proven, evidence-based testing methods that are capable of effectively supplementing current training, policies, procedures, and audits.

- *Recommendation 11: Identify and implement bias-countering policies, practices, methods, processes, and standard operating procedures to mitigate bias.*

  The Department recommends the City contract with a suitable academic institution to conduct an independent, comprehensive, and evidence-informed assessment of the Department's enforcement practices, cultural norms and customs, training, accountability procedures, and any resulting racial disparities. A similar partnership between the City of Oakland and Stanford University yielded promising results and provided a roadmap for creating community-based strategies aimed at addressing the unique historical and cultural challenges of a city: Data for Change & Strategies for Change.

- *Recommendation 12: Include the comprehensive Racial History of Policing curriculum in the cadet training academy and adapt it into required training for existing officers, at all ranks, annually.*

  The Department intends to incorporate the Racial History of Policing training in future cadet class and is determining the best approach and frequency for administering the training to existing officers.

- *Recommendation 13: Follow the guidelines for racial equity training established by the Equity Office. The Equity Office and Office of Police Oversight shall be consulted for final selection of official racial equity training for officers at all ranks.*

The Department is committed to following the established guidelines for racial equity training and welcomes input from the Equity Office and Office of Police Oversight.

Recommendation 14: Develop a method to provide racial equity training on an ongoing basis (a minimum of 40 hours per year for all staff, sworn and civilian, in the department, annually, during every year of service).

The Department is eager to provide additional racial equity training for all employees in an effective, feasible, and sustainable manner. The Department will consider this recommendation as part of the FY21 budget process.

Community Policing

Austin Data

One of the goals of community policing involves citizens having an active role in policing. In Austin, that translates to District Representatives and other support positions to enable citizens to have a role in supporting and working with the police: Community meetings and gatherings are attended, foot, bicycle, and horse patrol are used in targeted areas (especially the entertainment district). Currently, that role may shift somewhat with the reallocation of resources.

Two Reports were reviewed that address community policing in Austin. The first, Community Policing Advancement in Austin (2020) was a response to the staffing report needs assessment provided by the Matrix Consulting Group and describes Austin's community policing scope of work. The response provides several recommendations too numerous to list here. However, those related to the nature of the current report are the inclusion of pedestrian stops and field interviews in the yearly police profiling report, developing a marketing plan for community policing, greater funding, developing an evaluation plan, and performance measures.

Additionally, the report recommends developing a recruiting and training plan for community policing, revising job classifications that reflect community policing principles, the creation of neighborhood portfolios, consideration of a field training program, supporting neighborhood events, consideration of non-English speaking populations, and the consideration of officer volunteers and community youth.

Community Policing Matrix Report 2020 Key Recommendations

- Develop Community Policing theme that highlights the philosophy as a major focus of Academy training
- Send exit interviews of cadets and trainees directly to HR
- Explore the use of problem-solving based learning methodology
- Produce a recruiting video more aligned with community policing

Community Policing/Advancement in Austin 2020

APD's response to the Community Policing Matrix Report can be found on pages 31-36 of the report itself. The column on the right indicates which responses have and have not been implemented.

The second report is by the City Auditor (2020), and is entitled, The Impact of Community Policing Efforts. The report provides two types of analyses. The first is an analysis of the time officers have available to engage with the community (Figure 4 below).

As shown in Figure 4 (next page), Officers' uncommitted time when they are not responding to a call can be less than 5 minutes per shift during which they also check e-mail, write reports, read policy updates, and engage in other tasks. Clearly this is not an ideal situation. The second analysis is an employee survey conducted to determine if perceptions had changed since the initial matrix was conducted in 2016. Results were mixed and can be found on pages 13-16 of the report. The percentage change between pre/post is shown on the right side of the page.

National Data

A variety of opinions exist about the value and effectiveness of community policing, dependent in many instances on the makeup of the community. Nationally, the population is 72 percent White, and 13 percent Black. And the US police force is 75 percent White and 12 percent Black. Asians and Latinos have smaller numbers of representation nationally (Vitale, 2018). From a macro perspective, this means that many White officers who live in White communities are patrolling non-White communities, where they don't live. The old school effective models of community policing entailed officers living in the areas where they work and intermingling with their neighbors. For this reason, Vitale (2018) argues that community policing today does little to empower communities, reduce over-policing in marginalized communities, or to reduce crime.

Figure 4: Estimated Available Time Community Policing: City of Austin Audit Report 2020



The President's Task Force on 21st Century Policing (2015) is favorable toward community policing done correctly. Crowl (2017) provides a review of the evidence surrounding Community Policing over the years. He enlists only studies with quality methods in his results. He notes that although Community Policing has many definitions and objectives, it attempts to address the conditions that enable public safety such as crime, social disorder, and fear of crime (Crowl, 2017), often in poorer communities of color. To accomplish this, it attempts to empower citizens to have an active role in working with the police. In the Crowl (2017) review, he shows that Community Policing has been found to be effective in high quality studies in reducing fear of crime (56.3% of the studies reviewed), citizen satisfaction (66.7% of the studies reviewed), fostering police legitimacy (77.8 % of the studies reviewed), improving job satisfaction (90% of the studies reviewed) and to some degree crime reduction (only 18.6% of the studies reviewed). These two views above are deserving of more attention, considering the comments below.

Key Observations/Comments from Interviews

- Poor communication with the community
- Community Policing not practical with current workload on patrol
- It would be good to have the same spirit of care for fellow officers to be infused into the communities they serve.
- Similar to interviewees, views that communication with the community in general is poor, community engagement during the academy was also lacking. Rather, interviewees said that community representatives spoke in class, and cadets prepared follow-up written reports, without ever actually going to communities.
- A number of interviewees elaborated on their perspective of the shortcomings of Community Policing in Austin. Black and Latinx officers noted that the current climate of mistrust for police in general puts them at a disadvantage with their own people when they are seen with the badge, gun, and blue uniform. Consider an example of parking on the street. Officers of

color who patrol in poor communities of color are aware of the residents saying that they are skeptical of the officer's sincerity for their well-being when asking them to comply with laws in their communities, when they know that in a nearby White neighborhood, residents are allowed and even encouraged to do the same non legal actions with no consequences, such as parking on the street. Since trust—a prerequisite for the development of a healthy relationship—is lacking in this example and others, trust will need to be restored in advance of effective community policing.

- Assignment to specialty units like community policing is not a fair process for African Americans.
- Community policing should be accomplished through true partnership with the community and a sense of restorative justice. That is, bringing together people harmed, and those responsible for harm and harm prevention in a safe and respectful way.

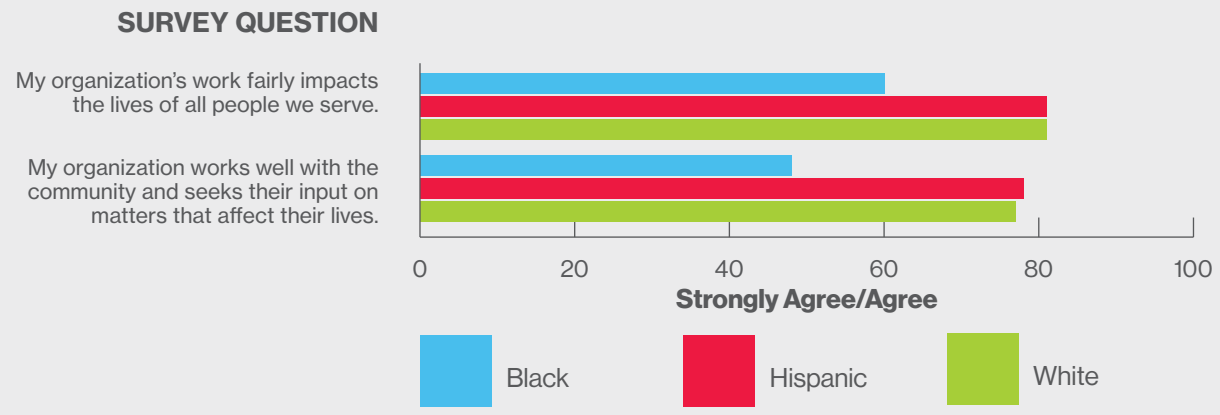
Survey Data

The two questions for this part of the survey are shown in Figure 5 below. Clearly the workforce values the communities they serve (means range from 4.07 to 4.14 on a 5-point scale—Appendix A). Questions were analyzed by race, ethnicity, and gender. Race is shown in the figure. Generally, it shows that a majority of respondents agreed with both statements, though African American are less likely to agree. This is again consistent with the overall findings of this Report.

CONCLUSION

This report provides key findings, recommendations and responses to the JJC team's review of multiple reports related to racial inequities that exist in the culture of APD, and the impact on internal and external stakeholders. Additional information from surveys, interviews with sworn and civilian staff, community members, and participants in the Groundwater Analysis workshop, provide a comprehensive analysis of the trends that speak to a long history of institutional and structural racism in the APD culture. These findings have informed the recommendations and beginning road map, that if implemented, have implication for beginning a journey towards creating an APD anti-racist institutional culture. The review of the reports, interviews and survey data all indicate that change in the Austin Police Department requires an immediate response. The Texas Model serves as the framework for the recommendations outlined in this report. It has proven to be effective in reducing racial inequities and improving outcomes for all populations. This is the ultimate goal of anti-racist work.

Figure 5: Community Policing by Race/Ethnicity



REFERENCES

Balco, R. (2020). There is overwhelming evidence that the criminal justice system is racist. Here's the proof. *The Washington Post,* June 10.

Crowl, J.N. (2017) The Effect of Community Policing on Fear and Crime Reduction, Police Legitimacy and Job Satisfaction: An Empirical Review of the Evidence. *Police Practice & Research 18,* no. 5 449–462.

DeMatthews D, (2016). *Effective Leadership is Not Enough: Critical Approaches to Closing the Racial Discipline Gap.* The Clearing House: A Journal of Educational Strategies, Issues and Ideas. Volume 89, 2016 - Issue 1. n1 p7–13.

Goff, P., Obermark, D., La Vigne, N., & Yahner, J. (2016). *The Science of Policing Equity. In Policy File.* Urban Institute.

James, J., Baumann, D. J., Rodriquez, C., Craig, S., & Kathan, S. (In Press). Creating Comprehensive System Reform to Reduce Disproportionality and Disparities: The Texas Community Engagement Model. In *Racial Disproportionality and Disparities in the Child Welfare System, Child Maltreatment Series,* Vol. 11, Alan J. Dettlaff (Eds): 978–3–030–54313–6, 466762_1_En, (Chapter 20)

Brown. K. M. (2006). Leadership for Social Justice and Equity: Evaluating a Transformative Framework and Andragogy. *Educational. Administration Quarterly, Volume 42 Issue 5,* December, page(s): 700–745

The Matrix Consulting Group, (2016). *Final Report on Community Policing.* Prepared for the Austin Police Department https://www.austintexas.gov/sites/default/files/files/Police/Austin_Community_Policing_Report_7–21_–_Final.pdf

Office of Police Oversight, Office of Innovation, Equity Office (2020). Joint Report: *Analysis of APD Racial Profling Data.* Austin, Texas

Pierson, E., Simoiu, C., Overgoor, J. et al. (2020) A large-scale analysis of racial disparities in police stops across the United States. *Nat Hum Behav* 4, 736–745 https://doi.org/10.1038/s41562–020–0858–1

President's Task Force on 21st Century Policing (2015). *Office of Community Oriented Policing Services.* Washington D.C, Department of Justice, May

Merriam, S. B (2008) *Third Update on Adult Learning Theory: New Directions for Adult and Continuing Education, NO. 119.* Jossey-Bass, San Francisco, CA, 2008, 96 pages.

The Tatum Law Practice (2020). *Austin Police Department Independent Investigation Fact Investigation*

Taylor, Edward W. *Transformative Learning Theory. New Directions for Adult and Continuing Education,* n119 p5–15 Fall 2008. http://www.anitacrawley.net/Resources/Articles/TaylorTransformative%20Learning%20Theory.pdf

Villanueva, S. (2020). *Review Analysis and Strategic Plan.* Austin Police Department Training Academy. Austin, Texas

Vitale, Alex. 2018. *The End of Policing.* London, England: Verso Books.

Racial Inequities and Institutional Racism:

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APPENDIX A:
APD Climate Assessment Survey

APPENDIX A: APD CLIMATE ASSESSMENT SURVEY

STATEMENT	STRONGLY AGREE	AGREE	NEITHER AGREE nor DISAGREE	DISAGREE	STRONGLY DISAGREE	TOTAL % (N)	AVE
Internal Organization Issues (1,2,3,17,18,20)							
1. I am satisfied with the culture and climate of my workplace.	11.96% (N=100)	29.55% (N=247)	12.92% (N=108)	23.33% (N=195)	22.25% (N=186)	85.13% (N=836)	2.86
2. I received adequate training in racial equity when I began employment here.	44.22% (N=371)	26.10% (N=219)	14.30% (N=120)	10.01% (N=84)	5.36% (N=45)	85.44% (N=839)	3.94
3. The process for advancement and promotion at APD is fair.	22.38% (N=188)	32.62% (N=274)	19.88% (N=167)	15.36% (N=129)	9.76% (N=82)	85.54% (N=840)	3.42
17. I am aware of the process of reporting a complaint through the Office of Police Oversight (OPO).	37.74% (N=314)	41.71% (N=347)	10.70% (N=89)	8.17% (N=68)	1.68% (N=14)	84.73% (N=832)	4.06
18. I feel comfortable reporting my concerns to the Human Resources Department.	28.88% (N=240)	31.41% (N=261)	17.09% (N=142)	13.12% (N=109)	9.51% (N=79)	84.62% (N=831)	3.57
20. Rules regarding employee misconduct are fair and equitable for all employees.	18.03% (N=150)	23.20% (N=193)	15.63% (N=130)	22.72% (N=189)	20.43% (N=170)	84.73% (N=832)	2.96
Attitudes (Gender, Race, Sexual Orientation) 4,5,6,7,8,9,13,14,15,16							
4. My organization treats women fairly.	42.55% (N=357)	32.90% (N=276)	13.35% (N=112)	7.63% (N=64)	3.58% (N=30)	85.44% (N=839)	4.03
5. I understand how systemic and institutional racism affect the organization's operations.	25.12% (N=206)	30.61% (N=251)	28.41% (N=233)	5.98% (N=49)	9.88% (N=81)	83.50% (N=820)	3.55
6. I can raise questions and issues of racial inequities and disparities in the workplace without fear of negative consequences.	26.59% (N=222)	27.54% (N=230)	21.92% (N=183)	14.13% (N=118)	9.82% (N=82)	85.03% (N=835)	3.47
7. I feel that my ideas and suggestions to reduce systemic racism in our system receive a positive response at all levels.	13.78% (N=113)	13.54% (N=111)	57.68% (N=473)	8.90% (N=73)	6.10% (N=50)	83.50% (N=820)	3.2
8. My organization does not discriminate on the basis of sexual orientation.	47.66% (N=397)	27.01% (N=225)	15.37% (N=128)	6.36% (N=53)	3.60% (N=30)	84.83% (N=833)	4.09
9. I feel that my organization operates in a race-competent manner.	37.30% (N=310)	31.41% (N=261)	17.21% (N=143)	9.99% (N=83)	4.09% (N=34)	84.62% (N=831)	3.88
13. Employees in my organization believe that institutional and structural racism exist.	5.90% (N=49)	21.33% (N=177)	34.70% (N=288)	17.95% (N=149)	20.12% (N=167)	84.52% (N=830)	2.75
14. Employees here are willing to work on issues that impact racial equity, despite discomfort.	25.51% (N=211)	41.11% (N=340)	22.61% (N=187)	7.86% (N=65)	2.90% (N=24)	84.22% (N=827)	3.78
15. Leadership of this organization makes it clear that racism will not be tolerated.	41.08% (N=341)	28.80% (N=239)	13.86% (N=115)	9.52% (N=79)	6.75% (N=56)	84.52% (N=830)	3.88
16. Leadership of this organization makes it clear that sexism will not be tolerated.	42.67% (N=355)	29.33% (N=244)	14.66% (N=122)	8.05% (N=67)	5.29% (N=44)	84.73% (N=832)	3.96

APPENDIX A: APD CLIMATE ASSESSMENT SURVEY

STATEMENT	STRONGLY AGREE	AGREE	NEITHER AGREE nor DISAGREE	DISAGREE	STRONGLY DISAGREE	TOTAL % (N)	AVE
Data & Reports Awareness (10,21,22,23,24,25)							
10. My organization is committed to reducing racial profiling of Blacks and Hispanics/Latinos.	44.65% (N=371)	26.71% (N=222)	20.10% (N=167)	5.78% (N=48)	2.77% (N=23)	84.62% (N=831)	4.05
21. I am aware of the data in APD reports on race and traffic stops, arrests, etc.	36.82% (N=306)	43.56% (N=362)	13.24% (N=110)	5.17% (N=43)	1.20% (N=10)	84.62% (N=831)	4.1
22. I am aware of the data in APD reports on race and use of force.	36.10% (N=300)	42.48% (N=353)	13.96% (N=116)	6.14% (N=51)	1.32% (N=11)	84.62% (N=831)	4.06
23.I am aware of the Tatum report.	29.72% (N=247)	49.58% (N=412)	10.35% (N=86)	6.74% (N=56)	3.61% (N=30)	84.62% (N=831)	3.95
24.I am aware of the data in APD reports on Community Policing.	26.39% (N=219)	39.76% (N=330)	19.16% (N=159)	12.65% (N=105)	2.05% (N=17)	84.52% (N=830)	3.76
25.I am aware of the recommendations regarding race in the above APD reports.	19.61% (N=163)	43.08% (N=358)	22.38% (N=186)	11.79% (N=98)	3.13% (N=26)	84.62% (N=831)	3.64
COMMUNITY (11,12)							
11. My organization works well with the community and seeks their input on matters that affect their lives.	40.38% (N=336)	36.54% (N=304)	14.78% (N=123)	6.37% (N=53)	1.92% (N=16)	84.73% (N=832)	4.07
12. My organization's work fairly impacts the lives of all people we serve.	45.07% (N=375)	34.74% (N=289)	11.18% (N=93)	7.09% (N=59)	1.92% (N=16)	84.73% (N=832)	4.14

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APPENDIX B:
Community Engagement Model

APPENDIX B: COMMUNITY ENGAGEMENT MODEL

Community Engagement Four Stages and Steps:

Stage 1: Community Awareness and Engagement

- Making the problem visible
- Sharing the data
- Telling the story
- Enrolling community leaders
- Building local allies

Stage 2: Community Leadership

- Expanding leadership at the community level
- Communities claiming responsibility for solutions
- Community investment in efforts to address the issue
- Community-based decision-making re: strategies
- Community structures (advisory committees, steering committees) through which work is accomplished
- Engaging stakeholders who have been the biggest critics of the system as solution-builders & advocates

Stage 3: Community Organization

- Going to the community, being guided by it to learn what strengths exist, what the needs are, and bringing community members / families and youth / natural community leaders into the process
- Selection of practices that are needed from the community's perspective
- Giving community members the chance for meaningful contributions
- Operating from the premise that the community knows best
- Recognition that communities are resilient
- Grounding the work in these principles:
  - Analyzing power
  - Defining racism
  - Understanding the manifestations of racism
  - Learning from history
  - Cultural sharing
  - Organizing to undo racism

Stage 4: Community Accountability

- Defining and achieving desired outcomes and measurable results
- Everyone is a contributor to what the results should be
- Sustainability is the ultimate goal
- Communities and systems are the owners of the solutions
- Community leaders do not stay silent—they advocate
- Community accountability transcends the work of CPS and other organizations communities must be accountable to people in the community for community wellness
- Communities hold all systems accountable for the oppression they have imposed on communities, their residents, their children
- Accountability must be visible supported through written MOUs and other formal strategies, having formal networks for services

Summary Points

- Highly inclusive process
- Reliant on a facilitative leadership process of committees and other entities
- Cross-systems approach with shared values, shared resources, mutual investment in identified outcomes
- Community leaders are engaged in decisions and the commitment of resources for sustainability
- Community strengths are a strong focus

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APPENDIX C: A Groundwater Analysis of Racial Inequities

APPENDIX C: A GROUNDWATER ANALYSIS OF RACIAL INEQUITIES

"Turning the Mirror Inward"

Description

In the absence of a racial equity lens, well-meaning leaders often continue to unconsciously contribute to sustaining and often perpetuating racial inequities in the design and delivery of programs. This workshop will enhance the racial equity awareness of the participants by building a common language and understanding, of the underlying factors that contribute to racial inequities. This increased knowledge can be a catalyst for developing strategies to build more effective programs and for strengthening and transforming the culture of systems towards increased accountability in response to the needs of all populations.

The facilitators are skilled in creating a safe space for participants to discuss institutional and structural racism in the historical and current context, in a way that holds us accountable for "turning the mirror inward" to examine systemic rather than individual factors contributing to poor outcomes. This safe space creates an atmosphere for all to engage in out-of-the-box thinking that can continue to be supported through consultation with JJC, beyond the workshop.

JJC will introduce the Ground water Analysis for examining racial inequities derived from an evaluation of the Texas Model:

- Racial inequities look the same across systems
- Systems contribute significantly to racial inequities
- Racial inequities cannot be attributed to one "bad apple"
- Racial inequities are concentrated in poor communities and communities of color
- Systemic interventions and training can work to reduce disproportionality and disparities and improve overall outcomes for all populations

The workshop is designed to enhance the awareness of well-meaning and committed leaders to strengthen and transform systems and community-based organizations to better respond to the needs of all populations.

The workshop components serve as a basis for analyzing racial inequities that exist and intersect across systems such as housing, education, law enforcement, financial services, healthcare, juvenile justice, child protective services, and employment. The outcomes of services in these systems disproportionately impact poor communities and communities of color in ways that previously may not have been considered. The workshop is designed to promote a clearer understanding of the role of leadership in systems and institutions in working together and in partnership with constituents and community to understand the history of institutional and structural racism, to strengthen our collective capacity to reduce and ultimately eliminate racial inequities in outcomes and in systems responses, both of which are predictable by race, across systems and institutions.

Workshop Objectives

- Examine by race/ethnicity, the data for multiple systems, to broaden knowledge and understanding of the underlying causes of racial inequities in systems and institutions, and the deeper more systemic factors that contribute to poor outcomes for vulnerable populations.
- Increase understanding of the importance of cross systems collaborations and being in partnerships with poor communities and communities of color to examine old attitudes, assumptions, and stereotypes, that shape the lens through which children, families, and communities of color are viewed so that systems begin to work in deliberate and intentional ways to remove the barriers that contribute to racial inequities.
- Introduce new language, skills, and concepts to move toward the development and implementation of more effective interventions that can reduce racial inequities and improve outcomes for all populations served.
- Engage participants in activities and facilitate dialogue designed to help systems be more accountable for "turning the mirror inward," to examine systemic rather than individual factors of racism, contributing to poor outcomes for poor communities and communities of color.
- Understand how institutional structures and practices impact outcomes for vulnerable populations.
- Engage in a facilitated dialogue to begin to examine commonly held attitudes and assumptions that create

and sustain disproportionate and disparate outcomes for poor communities and communities of color.

- Examine data by race/ethnicity for multiple systems, to broaden knowledge and understanding of the history of institutions, and the deeper more systemic factors that contribute to poor outcome for vulnerable populations.
- Examine the relationships that exists among systems and their collective impact on poor communities and communities of color.
- Begin to develop a common understanding and language that opens the door for conversations that are critical and necessary for undoing racism.
- Discuss the importance of moving from cultural competency to racial equity and developing a common definition and language with which to begin the journey to eliminate institutional and structural racism.
- Begin to develop the language and the skills to move toward the creation and implementation of more effective interventions that will reduce racial inequities and improve outcomes for all populations served.

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APPENDIX D:
The Groundwater Analysis Workshop Technical Assistance Report

APPENDIX D: THE GROUNDWATER ANALYSIS WORKSHOP TECHNICAL ASSISTANCE REPORT

City of Austin Police Department

ACKNOWLEDGEMENT

Joyce James Consulting (JJC) would like to thank the City of Austin, Office of Equity (OOE) and Police Department (APD) that helped bring "Groundwater Analysis" training and technical assistance to APD.

The willingness of Chief Bryan Manly, his command team and other sworn and civilian staff to have open and meaningful conversations about institutional and structural racism was invaluable to the open and honest facilitated dialogue. The presence of the OOE was critical to ensuring that all phases were in alignment with the anti-racist principles embedded in that office. The voices of the community members who shared in the workshop, debrief, and strategy sessions were very powerful in shaping the recommendations included in this report. JJC feels confident that in having strong community voices at the table, a higher level of accountability exists for change within APD.

Overview

The City of Austin (City) Austin Police Department looks to transform the department's culture in ways wholly antithetical to its beginnings as a law enforcement organization. The early history of the APD (as described in the Austin History Center's Austin Police Department Guide, 2018) recounts its law enforcement beginnings in 1840 with the election of the City's first marshal. Like other marshals of the day, those in Austin held enormous power. These elected officials picked their own officers, played a part in criminal executions and were chiefly responsible for upholding city law and order including the rules or laws specifically "designed to constrain slaves' behavior." One of these laws being slave curfews. The curfews made it unlawful for slaves to be in public or gather at night; responding to the fears of whites of people of color united through their enslavement. In their role as enforcers of the law, marshals and their officers could lash a slave found out in public after curfew with up to 15 lashes.

In 1862, the structure of the APD began to change in ways that reflected different societal norms. City ordinance set up the police department and a chief of police. Then in 1871, the first African American police officers joined the APD police force. Today, the APD workforce, both sworn and civilian, is more diverse. However, internal and independent reporting point to deeply rooted and persistent signs of institutional and systemic racism—that have not and cannot be diminished simply by the passage of time.

Therefore, consistent with the department's vision for systemic changes within the department, the OOE and APD contracted with Joyce James Consulting (JJC) to provide technical assistance, "A Groundwater Analysis of Racial Inequities" (GWA) workshop and a workshop debrief and strategic planning session. The mission of JJC is to support organizations, institutions, systems and communities in developing a racial equity lens to recognize institutional and structural racism as the root cause of racial inequities in all systems and assist in creating organizational cultures that actively engage in sustainable strategies to eliminate racism.

Background

Three theories of action serve as a foundation for the JJC racial equity workshop and guide the use of pre- and post-surveys: transformative learning, critical race, and adult learning. Transformative learning is the "process of experiential learning, critical self-reflection, and rationale discourse that can be stimulated by people, events, or changes in contexts that challenge the learner's basic assumptions" (Brown, 2006). Critical race theory argues that "racism and other forms of oppression are central to the experience of people of color and dominant ideologies justify the status quo/structural oppression and must be challenged (DeMatthews, 2016)." The adult learning theory focuses on knowledge building in a way that fosters "critical reflection...essential for transformative learning" (Taylor, 2008).

Qualitative Feedback

The GWA workshop facilitated the examination of systemic transformation and participants' awareness about racial inequities and disproportionality in outcomes across multiple systems serving vulnerable populations and communities of color. In providing the APD with training and technical assistance, JJC used

its pre- and post-surveys to establish a baseline of participants' perceptions of knowledge of institutional racism and racial equity prior to the workshop and identify shifts in participants' perceptions of knowledge of institutional racism and racial equity immediately after workshop participation. Identifying shifts from an organizational standpoint can assist systems in determining where further training and guidance is needed related to addressing disparate and disproportionate systemic outcomes, point to an increase in the number of participants who have developed a common analysis of racism and the history that led to current outcomes, and aid in the analysis of workshop effectiveness.

A key learning from implementation of the Texas Model for addressing disproportionality and disparities in several systems serving vulnerable populations was that when staff at every organizational level understand and value history, culture and the partnership of vulnerable populations and community. Further, changes occur in decision-patterns and interventions that impact systemic outcomes.

Why Undo Institutional Racism

Participants were asked as part of workshop introductions, "why is it important to undo institutional and structural racism in the APD system?" The following responses were captured.

- It's hard to hear men and women talk about unfair promotion and transfers. They feel like they don't have the same opportunities.
- Maybe I had blinders on, but I didn't feel like I was working in a racist organization. Hearing comments over the last twelve months has been disheartening.
- All lives don't matter until Black Lives Matter.
- I want everyone in the Department to feel equal.
- Not to do so is robbing us of opportunities to be the best we can be in terms of talent and opportunity.
- So that people can feel valued regardless of their skin tone.
- We cannot provide service to the community in fair and equitable ways unless we look at ourselves first.
- It's wrong.
- The system needs to be fair and equitable for everyone. Austin is safe, but it's not safe for everyone.
- We've missed opportunities to make changes because people of color haven't been in a better position to have their voices heard.
- It's a matter of life or death for this city. For example, people in certain zip codes have a life expectancy that is ten years less than average.
- It has a diverse impact on society as a whole.
- Because nothing is more destructive of a person's spirit than when they've been singled out for something they can't change, whether skin color, gender, or sexual preference.
- Because the children are watching
- Everybody is not awake.
- If we can't take care of our own people properly internally, how are we going to take care of the people we serve?
- It's our own responsibility to carry out policies and procedures that are fair to everyone.
- I've seen people's self-esteem and careers ruined because of racism.
- As a profession, we haven't been good about teaching our history.
- We can't say we've done what we should have in terms of learning our history. Those who forget history are doomed to repeat it.
- We also have to challenge ourselves and ask: Through whose eyes do we examine history? We need to step outside of ourselves and look at the history of those whose stories have been untold.

Other Comments of Participants

- In addition to accountability, training is needed (education). There needs to be education for everyone because the individual's behavior affects the whole.
- We're not even having a proper conversation about the war on drugs.
- The academy videos continually show black males in violent incidents which shape the way we see Black men. New officers come in with the view that Black men are dangerous.
- Coming out of the academy, we didn't talk about race, but neighborhood. We were told, "when you go to those neighborhoods, take extra precaution." When you expect a bad outcome, what are you going to get?
- Zero tolerance for racism ought to be clear on the front end, but that wasn't clear in orientation from the City or APD. We need to not only make it clear that we don't tolerate discrimination, but we need to market it.

- Our policies and practices have protected certain people in the City. White people have had sub-standard job performance and it was tolerated for months, whereas Black people who have had similar shortcomings have been gone within days. The only difference was race. As gatekeepers, we need to "get in good trouble" when we see this happening. If we say we don't tolerate this and when it happens nothing is done, it's perpetuated.
- We need to have a consistent message at the front door about what will not be tolerated, and reiterate the message at multiple levels as well.
- We need to ask, "am I handling this in the least obtrusive means": both cadets and those who have been here for years.
- We focus so much on the bad apples and not the system.
- We'll become better as we approach this work from an institutional and structural perspectives.
- I hope that everyone in the Department goes through this program. The approach of other programs that we have attended makes people shut down and think that they're a bad person.
- This approach is new or unheard of to much of our workforce. They're not connecting dots with previous bias training. I hope that this training will be lasting.
- It's important that the enemy is not an individual, but a system. This fits with the motto, "safer together." It is an uncomfortable conversation that is necessary.
- If we leave a legacy, what legacy do we want to leave?
- I don't want to be a part of the problem by not moving forward.
- The content and approach used in this training are good.
- We keep trying, but we are not making progress. The way this is framed makes sense. We've been focused on the individual and we can't see the forest for the trees.
- We get so focused on process that we lose focus on vision.
- We see the same percentage of contraband among Whites and Blacks who are stopped, even though Whites are under-represented with respect to the percentage who are stopped.
- The system doesn't value the voices of people who are impacted by their services.
- There is a disconnect between what we say that believe and accountability. We had racial equity training in all of the years where the data show disparities. That means that those trainings were "one and done."
- We need to refocus on accountability in systems and away from individual accountability.
- In recruiting, we can make changes to the application on the "front end" "We do not tolerate... xyz. If you agree, you can proceed with the application."
- We've done lots of training but aren't seeing a different outcome. We definitely need to go to structural.
- The data tell us that something needs to be fixed, but it doesn't tell us what or how. We need to dig deeper.
- I hope we don't do things in a cycle. I hope we continue to have diverse representation.
- We have a distinction between sworn and civilian. While we have the right voices at the table, I hope we will allow outside voices.
- Relationships are the basis of the external culture. What we lack is an empathetic lens. We need to create a space to listen and learn, as well as to create a model for the entire nation.
- We have the same training year after year, and the outcomes of traffic stops don't get better. It is significant that the data are getting worse for African Americans while the percentage of African Americans in Austin is decreasing.
- How do we ensure that we're building things that will last ten years from now: that people who come after us will sustain what we do.
- From the perspective of data, heart, and mindset, the civilian side has all eyes on how ADP will respond.
- I think we should explore more from the social-emotional aspect and send not only a message of what we won't tolerate, but the culture that we do want.
- The significance of eyes from the past are important. I think we can't get enough of the history of Austin.
- How does the community see the department, and how can we bridge that gap?
- I feel that this group is going to do really awesome things and I'm glad to be a part of it.
- People have to be won back to engage: both within and outside the organization. Some think that it's a hopeless task. Everyone has to pick up the oars and row the boat when some wonder if they even need to be in the boat.
- I think that this is a good way to move the system forward, but all pieces of the system are not here. Those who are not represented here are making decisions about our system, and that's frustrating.

- I'm excited. I'm ready to get out of the blocks and get moving. In addition to the data, which we know, we have to be able to think outside of the box and try some different things. As we're developing this plan, people are still being impacted within the department and in the community. Nobody has the perfect roadmap, so we have to take some risks. This needs to be something that all of our directors in the City need to hear. For example, someone in another division said that if a plan to address the homeless doesn't work, "we are going to unleash APD."
- If we can get to a point that any interaction can see our humanity, that will be a major step in addressing racism.
- Our efforts can't be departmentalized. It's not only something that only APD can work on. It needs to involve all departments of the City. Our eyes are opening that this discussion involves more than APD, and it can't be an adversarial approach. If we say that the only change involves APD, we're limiting our outcomes.
- Regarding power and purpose, there is a necessity to shift power. The history of this nation has been to "unleash" power on people of color. The pain point has been that power dynamic that people have been so frustrated about. Maybe we need to redefine our mission and purpose.
- In "re-imagining" public safety, what is the relationship with other organizations? That involves a deeper dive into a difficult conversation. How do we bring this into the "re-imagining" conversation.
- Anything that is working for Black people is destroyed, such as Black Wall Street in Tulsa, and Anderson High School in Austin.
- We used to arrest youth because of graffiti until the skateboarders started doing it. Then it became art, and we promoted it.

Participants' Surveys

JJC examined the completed pre- and post-training surveys, feedback from participants on evaluation forms and during debrief and strategic planning. This report summarizes the results of the training surveys and evaluations and JJC's overall recommendations related to strategies that reduce or end racial inequities and disproportionality.

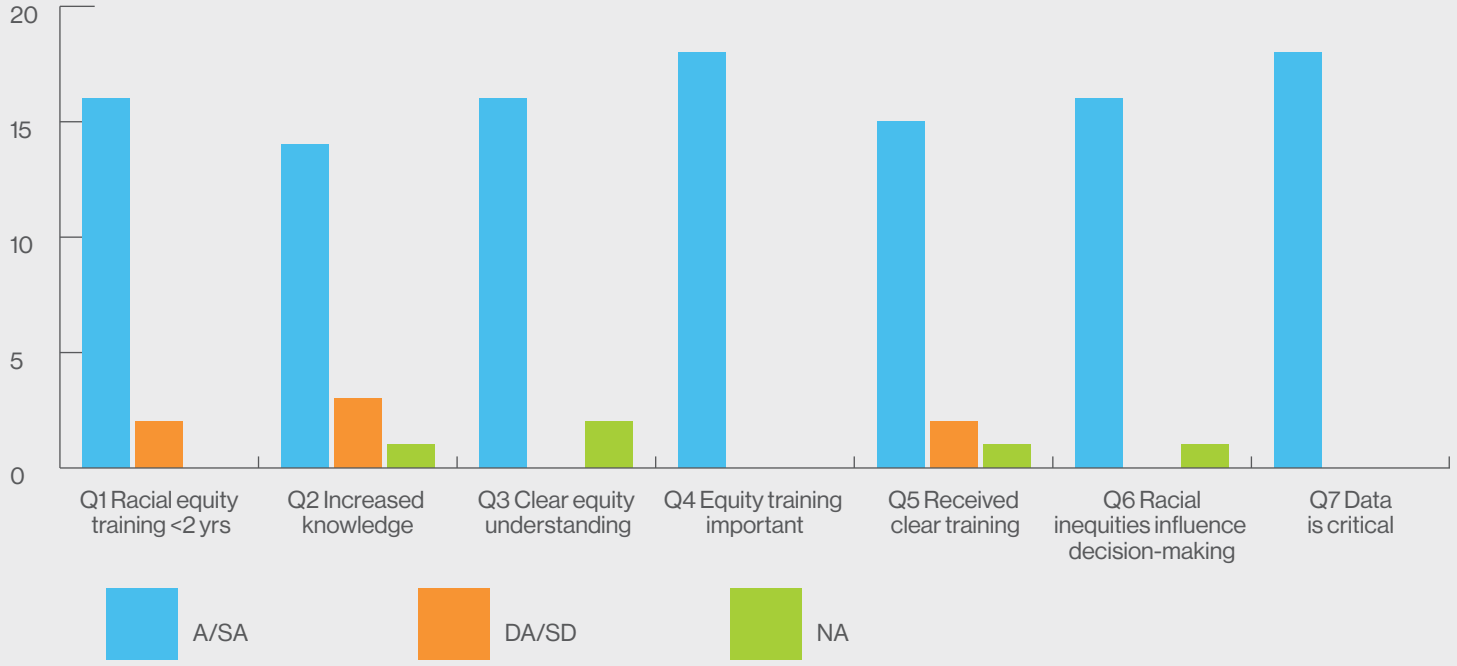
Pre-Surveys

JJC administered the workshop pre-survey immediately before training while the post-survey and evaluation took place immediately after. Participants' completion of surveys and assessment forms were anonymous and voluntary. Participants completing pre- and post-training surveys were asked to rank their agreement with the following seven equity statements using a Likert-type scale of "Strongly Agree," "Agree," "Disagree," "Strongly Disagree," and "N/A Unsure".

1. *I have received training within the past two years that has increased my knowledge and understanding of institutional and structural racism.*
2. *The training that I received contained information that increased my knowledge about the underlying causes of racial in equities in policing.*
3. *I have a clear understanding of what racial inequity and disproportionality means in helping systems.*
4. *I feel that it is important to train leadership and departmental teams to have an analysis and understanding of the history of institutional and structural racism in LE.*
5. *I have received clear training on the impact that institutional racism has on families and communities.*
6. *Institutional and Structural racism impacts the decision-making processes of individuals working within systems.*
7. *Data is critical in identifying racial disproportionality and disparities and in developing appropriate strategies that reduce racial in equities and improve outcomes for all populations.*

Most participants agreed or strongly agreed with all seven racial equity statements before training. At pre-survey, all participants agreed or strongly agreed that racial equity training is important (100%) and describe data as critical to identifying racial inequities (100%) (see Graph 1). Ninety-four (94) percent of participants agreed or strongly agreed institutional racism affect the decision-making within systems (see Graph 1). Eighty-nine (89) percent of participants said that it is important to train leadership and departmental teams about the difference between equality and equity (see Graph 1). Finally, seventy-eight (78) percent of participants said the institutional racism and racial equity training prior to the JJC training increased their knowledge.

Graph 1. APD Pre-Training Survey 09/24/2020 N=18



Post-Surveys

The post-survey asked again the seven equity questions for participants' after training. All participants agreed or strongly agreed with all seven equity statements (see Graph 2). (One participant joined by phone and did not complete the post-survey or evaluation.)

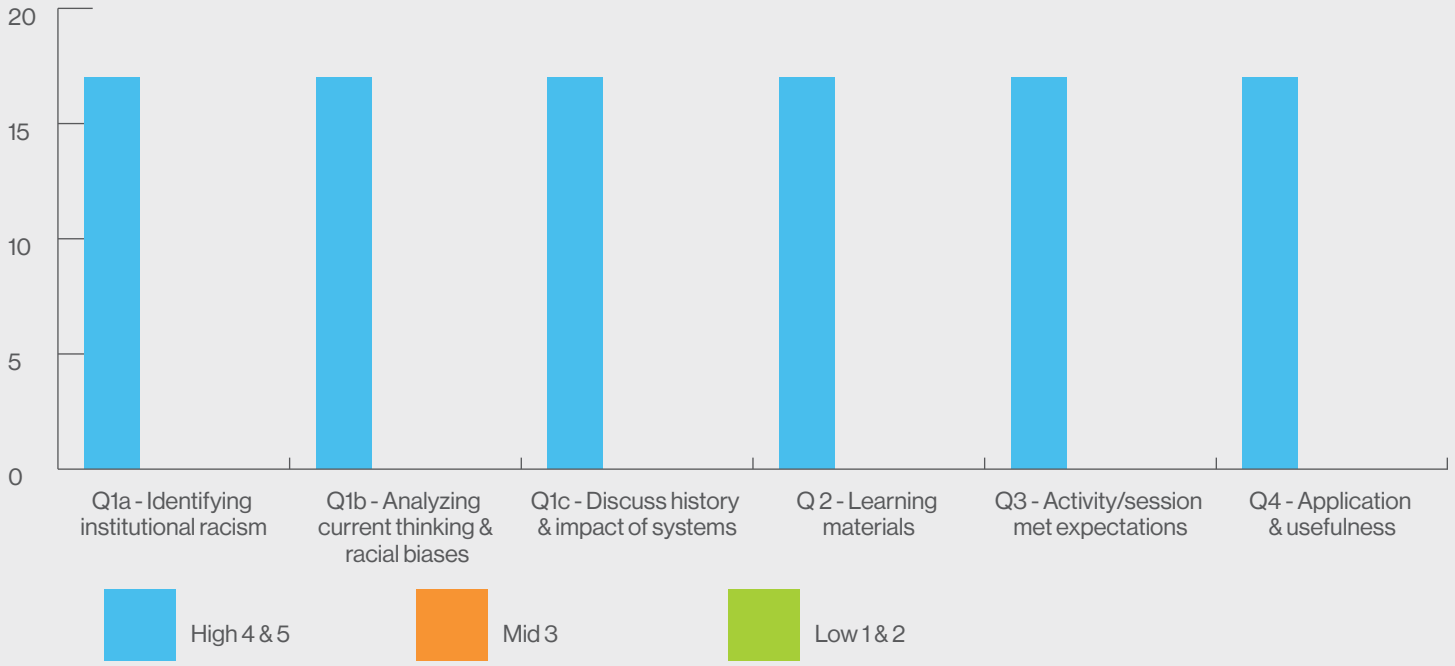
Graph 2. APD Post-Training Survey 09/25/2020 N=18



Participants' Evaluation

As part of the evaluation, participants ranked JJC's achievement of the workshop learning objectives and the application and usefulness of content on a Likert-type scale of one through five where "1" was the lowest and "5" was the highest (see Chart 3). All participants ranked all scaled responses at "4" or "5" (see Graph 3).

Graph 3. APD Participant Evaluation – Scaled Responses 09/25/2020 N=17



In addition to the scaled responses, participants provided qualitative feedback based on the following questions.

"What information or activities did you find most impactful?"

- discussion on equality and equity
- deep discussion on systems
- safe sharing environment; analogies
- equity vs. equality "Great" Enjoyed all!
- the statistical analysis of systemic racism
- the equality vs. equity exercise
- definition of structural an institutional racism
- all the examples & dialogue
- explaining the difference of systems-based vs individual based racism. Focus on systems, equality vs. equity graphic
- the background information of the instructors' parallel experience & impact on CPS systems to better outcomes for Blacks
- highlighting the differences between individual racism and systemic racism
- equity/equality exercise
- slide presentation/conversation/knowledge
- the chart equity & equality chart
- group discussion and experiences—understanding of systems
- The equality versus equity slide. The discussion and presentation were quite impactful.
- The equality vs. equity

"What aspects of the process will be most helpful to you in your daily life and/or work experience?"

- decision making
- developing strategies

- new understanding of equality v. equity
- ability to identify the barriers!
- understanding and dismantling systemic racism
- understanding the role of systems in outcomes and looking with a new lens
- having this conversation w/non-blacks
- the greater understanding now imprinted on me
- using a systems-based lens to examine issues and develop solutions
- identifying ways to remove fences
- Institutional/structure of racism
- all of it—but who was in the room receiving the training
- the equality vs equity

"How will this process provide an opportunity for you to be more effective in your work?"

- listening with a wider spectrum of knowledge
- developing analysis to think systemically
- understanding equity
- ability to change systems
- looking at the processes through the lens of outcomes
- the opportunity to use a new lens w/data to determine if we are affecting outcomes in a positive way
- helps me too create a safe inclusive environment to have a dialogue about this issue
- it gave me the awareness, tools, and hope I needed to move forward
- providing information I can use to create actionable items
- a framework to use when analyzing current systems & having conversations with coworkers about change outcomes
- creating a group to work together, having been through this training together
- better identify organizational impediments to equity
- the principle understanding we put to use in the department (APD)
- education and challenge to think outside the box
- understanding, enlightenment
- I will be able to clearly articulate how structural racism impacts the implementation of initiatives
- this process has helped me to look at the systems

"What new skill or idea will you implement into your job or practice...a result of attending this educational event?"

- decision making w/equity in mind
- systems thinking
- still a work in progress
- ensure all employees are exposed to this
- evaluating outcomes as systemic indicators
- providing this same lens and understanding to the workforce
- open conversations on race relations
- I will re-evaluate hiring processes specifically disqualifications that may be inequitable. I will add anti-racism in our mission vision.
- looking @ all policies & practices in my area of responsibility
- removing the fence!
- using a systems approach to problem solving
- implement the ideas of this session
- ensure the consideration of applicants based on their particular skills and circumstances
- addressing systemic change

Participants' Additional Comments

- great!
- truly outstanding & inspirational
- you all are awesome I want to be you
- best training not only on this subject but compared to other topics
- great training!

DEBRIEF

As a follow-up to the GWA workshop, JJC conducted a 3-hour debrief with participants. The purpose of the debrief was to share the data and information collected through participants' pre- and post-surveys and evaluation and consultants' observations drawn out from training discussions, provide participants with an opportunity to share their personal insights and awareness after reflection, gather additional feedback on individual training experiences such as how they may have connected with content and activities, and identify any new perspectives and learnings, which might translate to changes in day-to-day practices and strategic planning.

Why important to undo institutional and structural racism

- It's a birthright.
- Now we have a better definition and now I have a starting point. On both sides, there needs to be an understanding

of how we want our officers to come home every night.

- Colin Kaepernick was very peaceful, but he was told to stay in his place and was ostracized.
- After Olympic medalists Tommie Smith and John Carlos gave the Black Power salute while the Star-Spangled Banner was playing, their lives/careers were ruined because they didn't stay in their place. (They'd won gold and bronze medals respectively in the 200-meter sprint at the 1968 Summer Games in Mexico City.)
- Law enforcement is often used as the clean-up mechanism for other systems. Unless we address the problems in the whole system, we're still going to tell police to take care of it.
- For the longest time, I thought I knew what institutional racism meant, but I realize that I don't.
- If I go in thinking that there's going to be a bad outcome, there's going to be a bad outcome.
- Teaching cadets racial profiling
- Many cadets say that they grew up in neighborhoods where everyone looked like them, so most of what they learn about Black people is learned on the street.
- In medical school, they dissect bodies to learn more about how to find a cure. The same is true about the history of policing.
- How do we get people to step into the reality of what Black people experience every day? Black people get tired trying to convince White people that this is really happening. It feels like a loop repeating, and it's tiring.
- If we're not conscious of the jobs we do, we can do really bad things. For example, there were people in Nazi Germany who went to work every day and planned transportation of trains to the concentration camp; those in purchase who bought bullets and gas; those who were planners, and so forth.
- As the lightbulb comes on, people need to know about resources that are available. How do we get everyone at the table who needs to be there?

What we heard from participants about fences in the APD

- The system that is in place for promotion. Is it a fair system? What does a fair system look like? That brings in the contract and barriers associated with that.
- Challenges with specific required course work in forensics that vary by university and impact incoming qualifications.
- Many applicants have been disqualified because of low category offenses that can be reconsidered for civilians.
- Promotions, transfers, and disqualifies in recruiting system.
- Making sure everyone has an opportunity to succeed and advance. Inclusion across the board.
- FTO program needs to be re-examined where FTO tells new officers to forget what they've learned in the academy. Can ride-alongs be a part of cadet training in the future?
- Communication throughout the department from the time a recruit steps into the academy and some of the comments within and externally from the community reveal communication issues.
- TPOA has a document with a whole list of items. They are being written up more formally. This information will be shared and may impact Women, Hispanics, and Union as well. Don't want to leave out any group.
- Commitment from leadership that is communicated both internally and externally that we are going to make this change at every level.
- Commitment to leaning into the fences and acknowledging the fences.
- Fence around community trust. Figure out strategy to restore that trust. On the community side, there are people who don't want APD at the table, but they need to be at the table in order to re-imagine public safety.
- Resources. If all 50 or 100 managers throughout APD were involved in this discussion, we would have so much more input into what the fences are.
- In the recruiting process, we should consider allowing second chances for bad credit, eviction, and so forth.
- Assure that we don't rebuild the fence with protectionism in efforts to rebuild trust within the community. For example, it's true that police want officers to come home every night. How can everyone sit at the table and be respectful of the culture from the community's viewpoint? **JJC**: Maybe go to the group and ask, "what would it take to be invited back to the table?"
- How do you repair trust when some of the messaging is not community oriented? **JJC:** Through communication, the community needs to know what APD is doing. How do you message it in a way that says this is what the APD is doing?
- Some people who don't represent the community go through the back door and say that they do. There has to be reciprocal communication.

- We must use the history of policing as a point of departure.
- The community has power, but no authority. The power comes from the institution. How can we bridge that gap?
- How do we transfer authority to the community so that it is actually distributed there and change comes from a unified effort?
- Who is "the community"? Some parts of the community are not in sync with or in agreement with other parts of the community. JJC: How do we develop strategies to hear voices from all segments of the community?
- There are multiple communities. How do we talk to the little guy in the equity slide such as the formerly incarcerated, Black trans women, homeless, etc. because those are the most vulnerable and those most left out of the community. If we don't have an existing relationship, we need to create one.
- Division between sworn and civilian is an extreme fence. Employee relations and recruitment have areas of similarity to identify and then synchronize. That's a huge piece of the puzzle. Employment processes for 911 and officers are the same in the beginning, and then break off at some point. If HR is not on the front end of employment meetings, there are challenges on the back end.
- Do a better job of marketing areas that have been neglected.

STRATEGIC PLANNING

Fundamental to the APD's future success in tackling the complex and persistent problems of racial disproportionality and disparities in its outcomes is a roadmap—strategic plan—designed to address institutional and structural racism. With the foundation of a deeper understanding about institutional and structural racism as the root cause of racial inequities; the goal of the APD strategic planning session (as facilitated by JJC) was to identify priorities and opportunities for measurable actions.

The strategic planning session opened with participants selecting by consensus the following immediate priorities.

1. Develop and deliver a consistent message about racial inequities and disproportionality about what will not be tolerated and a plan for reiterating the message at multiple levels within the organization and at APD's "front door."
2. For both the APD cadets and those who have been in the department for years, ensure policing is handled by the "least intrusive means."
3. Thoroughly analyze data to ensure focus on the most appropriate areas.
4. Engage members of the community who participated in this process with APD, in the ongoing planning and implementation of new strategies that will improve and strengthen partnerships with community.
5. Add anti-racism language to the APD core values and principles to strengthen the APD mission and vision statement in conveying the importunate of an anti-racist organizational culture.
6. Develop a process for engaging with "Ida Sector" officers, community members, TPOA, and others, to actively involve and hear the voices of the community in the design of a new and inclusive community policing model.
7. Examine budget allocations that may support the new community policing model, i.e., hand select officers, include Ida Sector community members in GWA workshops with assigned APD officer
8. Engage both sworn and civilian staff in the process of identifying and undoing institutional and structural racism.
9. Identify other cross systems partners, city of Austin departments, community-based organizations and individual community members to include in the ongoing efforts to develop an "upstream" collaborative approach to undoing institutional and structural racism in APD.
10. Prioritize and develop a plan to make GWA training available to the APD across department and at multiple levels.
11. Conduct a critical examination of the APD policies and procedures through a racial equity lens

RECOMMENDATIONS

The historical nature and design of law enforcement and all other systems, shows that systems as originally structured have an oppressive racially defined relationship with internal and external constituents. Therefore, ensuring an organizational culture and climate that is supportive of the APD vision requires that the department actively engage in creating a sustainable culture; one not solely focused on individual implicit biases, but rather,

placing a higher level of accountability for addressing racism at the institutional and structural levels. Systemic change will only occur when leadership can visibly demonstrate a willingness to be intentional, deliberate, transparent and vulnerable in recognizing the long history of racism in policing and in creating a liberated and safe space for internal and external stakeholders to share in every step of the process of creating the new APD anti-racist culture.

JJC has recommended in the full report that APD use key components of the nationally recognized Texas model to support and enhance efforts to create its more race competent organizational culture. Racial disproportionality and disparities are complex and multi-faceted. These components will act as a frame for the necessary work ahead.

REFERENCES

Austin History Center (2018). Austin Police Department Guide, Sources of Information Relating to the Austin Police Department. Austin Public Library

Brown, K. (2006). Leadership for social justice and equity: evaluating a transformative framework andragogy. *Educational Administration Quarterly,* 42(5), 700–745.

DeMatthews, D. (2016). Effective leadership is not enough: critical approaches to closing the racial discipline gap. *The Clearing House: a Journal of Educational Strategies, Issues and Ideas,* 89(1), 7–13. doi:10.1080/00098655.2015.1121120

Taylor, E. W. (2008). Transformative learning theory. *New Directions for Adult and Continuing Education,* Vol. 119, Wiley InterScience, doi: 10.1002/ace

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COMPLAINT
EXHIBIT C

Community Report

Austin City Council Resolution 66: Austin Police Department Training Video Review Panel

By: Jeaux Anderson, Angelica Erazo, Andrea Black, Maya Pilgrim, Miriam Conner, Phil Hopkins

January 18, 2021

"The truth is that the police reflect America in all of its will and fear, and whatever we might make of this country's criminal justice policy, it cannot be said that it was imposed by a repressive minority."
-- Ta-Nehisi Coates, Between the World and Me

"Today has shown police don't need de-escalation training. They choose who to escalate on. That's not a training issue."

-- @traceyecorder in reference to Jan. 6 riot at the US Capitol

LINK TO EXECUTIVE SUMMARY

I. Introduction

II. Patterns Identified in Videos

A. Pattern: Racial Bias, Stereotypes and Use Of Force
B. Pattern: Overrepresentation of "What Not To Do" Videos
C. Pattern: Ineffective Language and Neglected Power Dynamics
D. Pattern: "Us Versus Them" Mentality
E. Pattern: Dramatic Reinforcement of the "Danger Imperative"
F. Pattern: "A Few Bad Apples" Theory of Police Accountability
G. Pattern: Emphasis on Transactional Interactions
H. Pattern: Inappropriate Use of Mass Media News Clips

III. Insights into the APD Training Academy Curriculum and Process

A. Ineffective Adult Learning Strategies
B. Lack of Overall Coordination
C. Ethics Training Isolated
D. Concerns About Process

IV. CONCLUSION

I. INTRODUCTION

SCOPE OF THIS PANEL

We were invited as community member representatives to review a core set of Austin Police Department (APD) training videos shown at the police cadet academy as laid out in Austin City Council Resolution 20191205-066.[1] The videos we reviewed were chosen by leadership from the Austin Police Department and the Office of Police Oversight. We reviewed videos within the Arrest, Search and Seizure; Arrest and Control; Crisis Intervention; De-escalation, Tactical Communication; Use of Force; and Use of Force - Legal modules. Our task was to identify and analyze any racial and gender inequities in the videos and the ways in which the video training material may reinforce larger cultural stereotypes and narratives.

We are writing this report to share our experience and analysis at the end of a seven-month process. This report supplements the formal reports submitted by the panel facilitators at Life Anew. We would like to call attention to the external review produced by Peace Mill Research and Communications, "Community + APD Equity Assessment Series: Austin Police Department, Training, and Recruiting Divisions."[2]

CONTEXT

We are writing this report in the midst of turbulent times. We undertook this review as a community panel a year after the Austin City Council recognized in 2019, through Resolution 66, the Austin Police Department's (APD) "history of bigotry and discrimination that has contributed to racially disparate outcomes in policing and policy."[3] We came together in 2020 during a summer of uprisings in response to the police killings of Black people. We are currently experiencing a global pandemic that is overwhelming our underfunded public health system and has resulted in disproportionately high sickness and death for Black and Brown communities. This same year, a presidential executive order banning anti-racism training in federally funded programs was issued in an attempt to erase the history and the violence inflicted upon communities of color.[4]

We have undertaken this review and report with a sense of responsibility to the communities of which we are a part and a commitment to voice our analysis and experiences in regards to disproportionate targeting of, and violence toward,

[1] https://www.austintexas.gov/edims/document.cfm?id=332753
[2] http://www.austintexas.gov/edims/pio/document.cfm?id=352525
[3] https://austintexas.gov/page/resolution-66
[4] https://www.whitehouse.gov/presidential-actions/executive-order-combating-race-sex-stereotyping/

communities of color at the hands of Austin's police force. We recognize that the patterns we witnessed while reviewing the APD training videos are not exclusive to APD but are reflective of our society at large. However, as we witnessed in video after video, the power and authority which APD wields can have lethal consequences. We continue to witness Black, Indigenous, and Brown deaths across the country at the hands of police. We know APD wants to and can do better. We submit this report in the hope that APD will:

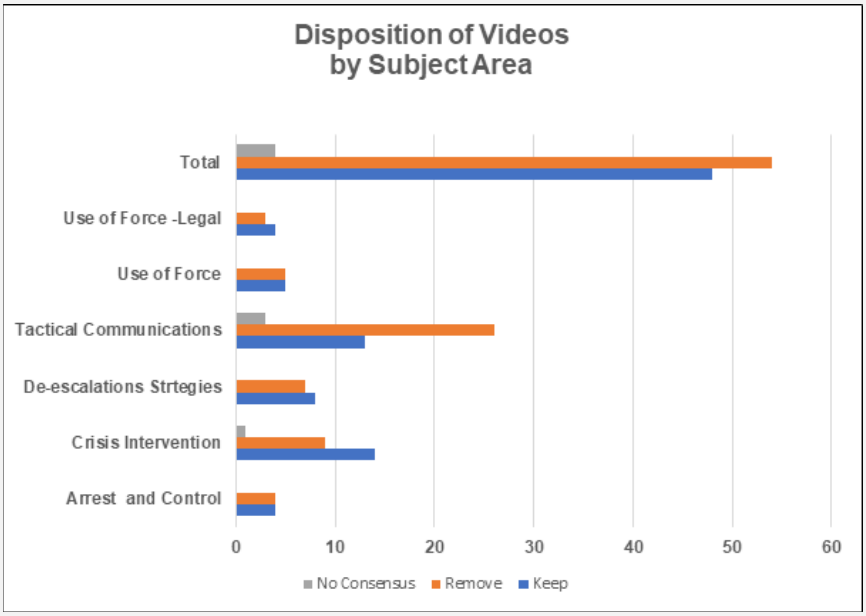
- Unify a siloed approach within the department that currently leads to disjointed training;
- Reevaluate, root out, and correct the ways in which the numerous biases we delineate below--specifically racism, classism, homophobia, ableism, and misogyny--currently permeate its training materials; and
- Interrupt the patterns and mechanisms of systemic violence in the larger culture which are perpetuated by the department charged to protect and serve.

We also recognize that the review of videos used in the cadet training is but a single gear in a larger departmental, city, and cultural machinery that perpetuates biases and behaviors that enact systemic harm and oppression on our communities.

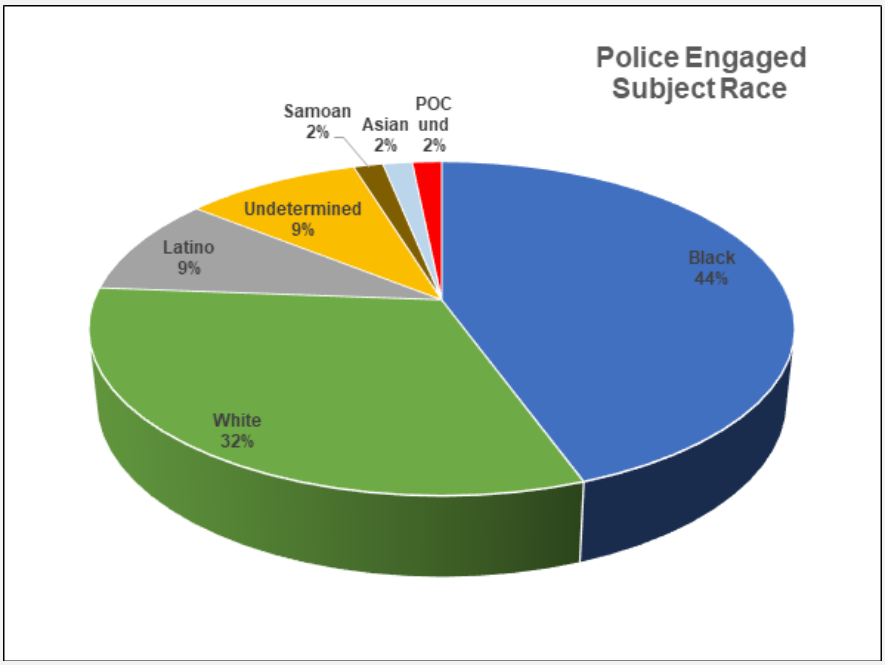
II. PATTERNS IDENTIFIED IN VIDEOS

Pattern: Racial Bias, Stereotypes and Use of Force

The vast majority of the videos we reviewed over these seven months were disappointing in quality. Most were outdated, many were hard to follow and had poor viewability, and some had unprofessional or sensationalistic commentary. Please reference Graphic A below. **But, *by far the most alarming pattern we witnessed was the harmful stereotypes perpetuated against Black and Brown communities***. The videos shed light on the disproportionate interactions police have with Black, Indigenous, and Brown communities that result in violence and death. The videos we reviewed were mirrors of the patterns of racism, sexist gender norms, and classism we see perpetuated across systems and institutions in Austin and nationwide, including the fact that the outcome of many of these videos was almost immediate and completely avoidable death. Graphic B below highlights the race of the subjects that engaged with police from the videos reviewed. Graphic C depict the subject's race that involved the subject being shot. In both graphics we can see people of color, particularly, Blacks, being overrepresented in the videos highlighted in the curriculum.



Graphic A - *(Graphic highlights the disposition of videos by subject area and the review panel's suggestion on either keeping the videos, removing them or where no consensus was reached. Over 50% of the videos were recommended to be removed from the curriculum.)*



Graphic B - *(Graphic displays the subject's race from the videos. Blacks comprised the largest percentage of subjects at 44% and whites as the next highest percentage of 32%. "POC und" is a subject of color of undetermined race. Out of the videos filtered, 59% involved subjects defined as people of color). Austin's city demographic listed the city's population as: 48.3% White (non-Hispanic), 33.9% Hispanic, 7.8% Black, 7.6% Asian, 0.7% American Indian or Alaskan Native, 0.1% Native Hawaiin or Pacific Islander.*

Issues of Racism, Implicit Bias, Not Integrated Throughout

We did not observe any discussion about the historical context of policing and the impact of White supremacy, racism and other intersectional forms of oppression, or implicit bias. While this may be covered in a separate training module, we believe it is critical that discussion of these issues be integrated throughout the training and that cadets be supported and encouraged to discuss the racialized, gendered and classist dynamics at play in every day interactions with the community. **These issues should be addressed at both the individual officer level as well as at the departmental level. Instead, the training appears to be focused solely at an individual level, focusing on an individual officer's "professional" vs "personal" demeanor and looking solely at their individual interactions.** There is no discussion about how they can and should intervene when issues of bias or racism or other misconduct arise or to examine how a department can and should build trust in the community and how it can respond to harm it creates in the community and work to repair harm and rebuild trust. It should not be about "hiding" or ignoring bias but about confronting it in effective ways. This is a critical area that requires in-depth training integrated throughout the training modules.

Dehumanizing Footage

Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed. We saw this play out in the way that many peoples' faces were not blurred--even when footage showed them in extreme crisis, nudity, and in vulnerable positions. In several videos, people's names were shared or people were depicted via police "mug shots" although not relevant to the training objective.

Many of the videos showed People of Color, and in particular, Black people, being brutalized and/or their well-being utterly disregarded. ***Because these are real human beings, not actors, in particular moments of time in their life, it is important to not perpetuate insensitivities to people's privacy and show care and ethics around how people's stories are used as training tools.***

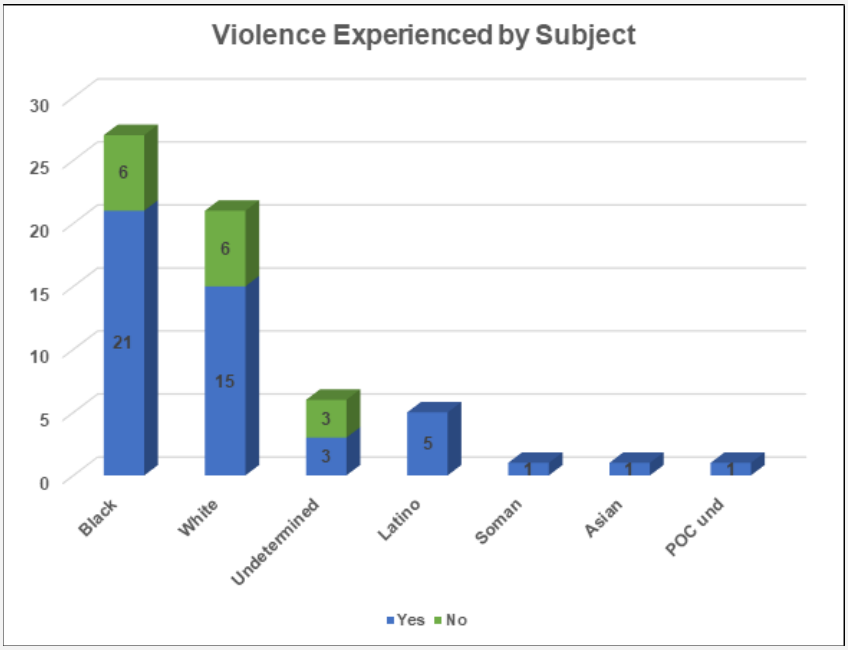
Rapid Escalation and Use of Force with People of Color

There was gross overrepresentation of the use of force and negative outcomes from mostly White male officers interacting with Black and Brown community members. We witnessed again and again mostly Black men dying within minutes, sometimes within seconds, of an interaction with police. There were exceptionally few videos showing the police trying to de-escalate situations involving People of Color. In many of the videos showing encounters with community members over minor criminal infractions, a strong emphasis on gaining compliance and control quickly

led to rapid escalation with often violent and even deadly results. We did not find any consistent focus in the training material on the fact that not all situations need to be controlled to the same extent and in the same ways. Please refer to Graphic C which is a representation of the number of subjects that experienced violence.

Many of the videos, including several that are more broadly used in police academies nationwide, are so disturbing in gratuitous violence against Black and Brown people that we strongly recommend that they only be used as examples of why community members historically mistrust the police. We do not believe these videos should be shown if APD trainers or guest facilitators are not able to offer a critical analysis and discussion of both what went wrong in the videos and how the results shown in them are shaped by deep cultural biases and stereotypes. We fear that repeated exposure to needless violence normalizes such interactions with the public for the cadets and desensitizes them to their own and their communities' humanity.

It is important to state that it was very traumatic for community members to watch repeated racialized violence displayed in the videos. We have grave concerns about the impact watching these videos will have on all cadets, and particularly cadets of color.

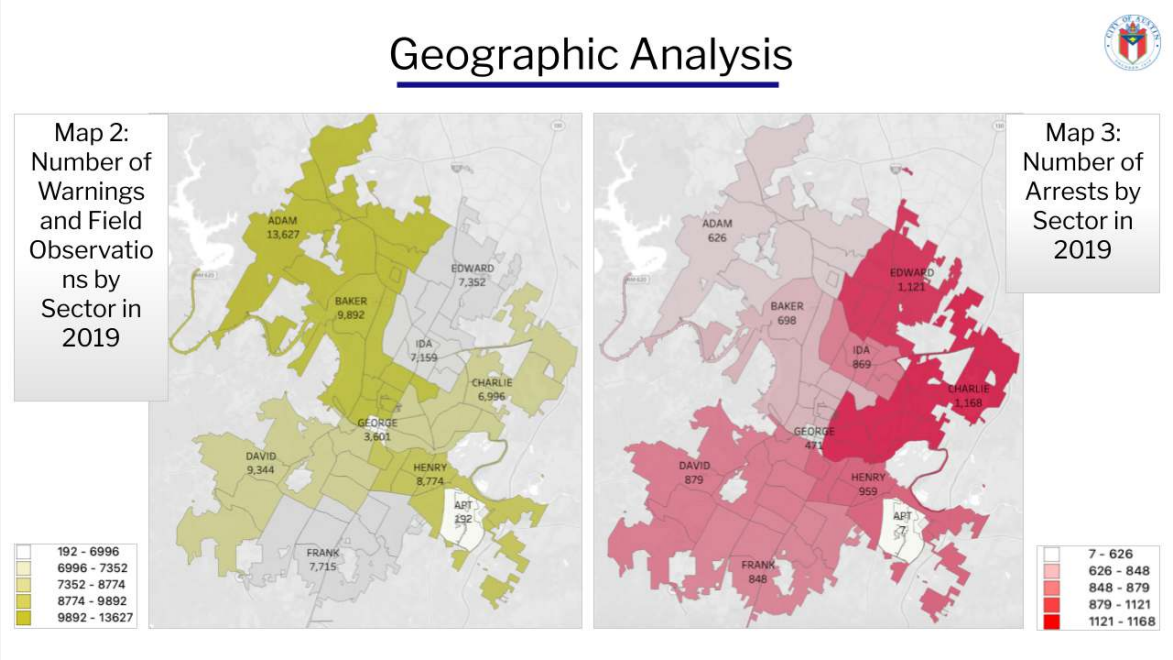


Graphic C – *(This graph is a representation of the number of subjects that experienced violence. Violence is described as tased, shot, shot at, killed, excessive force, shot with a bean bag, and pepper sprayed. As a percentage of the total number of subjects that experienced violence, Blacks represent 46%, Whites represent 30%, Latino 11%m Asian, POC und and Samoan represent 2% each, respectively. All people of color collectively represent 63% of all subjects that experienced violence.)*

Working Class and People of Color Seen as Threats

There was a clear pattern, both explicit and implicit, of different communities being offered different degrees of understanding and grace by officers. Police interactions with upper-class, White communities were noticeably absent in the videos. White people were often given considerable grace and understanding even when they demonstrated dangerous behavior, while People of Color, in particular Black men, were given little to no grace or understanding even for minor and less threatening actions. For example, one video of an armed White man showed an officer speaking calmly and reiterating the person's right to carry a firearm. In contrast, in videos where People of Color were armed or even unarmed, police officers treated them as threats and moved towards use of force with great speed. ***Such patterns echoed and reinforced popular narratives about, and attitudes toward, communities of color as more "dangerous" in clear distinction to White people***. In the training material, class markers also clearly assigned "dangerousness" to less affluent socio-economic groups.

We know that this pattern is not only reflected in the curriculum, but also in current Austin policing. Graphic D below, taken from a recent analysis of racial disparity in policing in Austin by the City of Austin's Equity Office, Office of Police Oversight, and Office of Innovation, shows the tangible result of this kind of biased training combined with deep historical inequities in policing. The map on the left shows that warnings and field observations were disproportionately represented in 2019 police interactions in the predominately White and affluent areas of West and North West Austin. In contrast, 2019 arrests were concentrated in East Austin (Central, North, and South) and areas of South Austin--areas with the highest concentration of Black and Brown residents. This data clearly shows the implications of unequal policing, specifically with officers giving more grace, in the form of warnings, in more affluent and Whiter communities; and giving less grace, in the form of over-policing and arrests, in working class and Black and Brown communities.



Graphic D – *(Graphic from the 2019 Analsys of APD Racial Profiling Data by the Office of Police Oversight, Equity Office, and Office of Innovation.)*

Gendered Stereotypes

Patterns of gender stereotypes across different modules displayed frequent and unacknowledged gender biases. Female officers were rare, and when one was present, we witnessed her judgments and strategies disregarded by her male peers. Descriptions of effective officer presence and posture were often described in masculine ways, such as an emphasis on perceivable upper-body strength. Women were most visible in the Crisis Intervention section--both as officers and community members--reinforcing the "feminized" stereotypes of care and stereotypes that view women as "victims" of "hysteria." While women, both as community members and officers, were absent in most of the Arrest and Control and De-Escalation videos, we did see disturbing moments of violence and "what not to do" examples from White male officers toward Black women civilians. When Black women were featured, the impetus to control their bodies and dominate the interaction was clear, with officers justifying force due to "angry" and "sassy" stereotypes.

A lot of the videos perpetuated toxic masculinity and continued to show a disregard for nuance in what it means to be masculine and in what it means to be a police officer. In their interactions with community members, we repeatedly watched officers cling to ideas of control that perpetuates the need to be an aggressive, alpha male and having to assert dominance. We saw little to no room offered for police officers to turn aside from a "need" to be dominant in order to better connect to, and work with, the community on a human level.

Who Is Allowed To Be In Crisis

Some of the videos, many in the Crisis Intervention section, gave cadets an opportunity to hear personal storytelling and build empathy for people's problems and difficulties. However, this storytelling came almost exclusively from White men. This leaves a gap in knowledge of how mental health issues may show up differently for women and gender-non-conforming community members. ***Instead, women and men of color were rarely allowed to speak for themselves and were portrayed almost exclusively in footage that cast them in uncritical narratives about their needs from the point of view of those who assumed the authority to speak for them.***

This difference in whose perspectives are valued and highlighted in the videos correlates to the stark differences in police responses that we witnessed. It was a very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats. In one example, we watched a police officer give a White-presenting man seven minutes of grace and conversation despite his suspicious behavior, while in several other videos a Black man was shot within seconds of being approached by an officer. The pattern we witnessed was that White community members in crisis are allowed to be in crisis; whereas Black community members, whether in crisis or not, are perceived with suspicion as threats.

Throughout this process, the training curriculum lacked substantive content on how to effectively interact with people with disabilities. There was little to no information provided about the ways in which crisis can present differently for individuals across the spectrum of neurodiversity and ability. There were some videos in the Crisis Intervention section that highlighted information on different abilities and mental health issues, but no clear advice was offered on how to best accommodate a range of abilities or what to look for when approaching a crisis situation. Without this training, officers may not have the tools to recognize the various ways that ability and mental health impact an individual's responses. In some cases, behaviors that may be perceived as "aggressive" by officers may in fact be indicative of mental health crises or disability.

Outside of the Crisis Intervention training section, there was no mention of how to adequately serve and protect community members with disabilities. There were a few videos that appeared to show people experiencing mental health crises; however no explicit mention was made of the role mental health played in the interaction, and many such instances resulted in excessive use of force by an officer. A 2018 audit of APD Response to Mental Health- Related Incidents highlights the lack of implementation of peer-city best practices in APD crisis intervention training. This panel similarly identified these patterns and need for improvement.

Particular Crises Are Validated; Racialized Trauma Is Not

We also observed dramatic differences between the strategies taught during Crisis Intervention and the strategies taught in the other modules. The crisis intervention strategies encouraged officers to consider different factors that may influence a person's responses in a given situation. Trauma responses, developmental disabilities, and neuro-atypical behaviors were discussed and considered. Dementia, autism, and Alzheimer's were highlighted in particular. It was emphasized that people dealing with these issues deserve to be treated with dignity and respect. ***These strategies were nowhere to be seen in any of the other modules nor was their absence deemed relevant in processing the content of the other videos. Limiting these strategies to a particular module can have the effect of contradicting and devaluing those strategies and skills.***

We are concerned that such dignity and respect seemed largely restricted to people in recognizable mental health crises, but not other people in different forms of crisis, particularly those still largely unrecognized and produced by the allostatic load brought on by the stress and trauma of racialized poverty in our society. The emphasis on broadly supported mental health issues made stark the absence of recognition and support for these other serious and prevalent mental and emotional health issues throughout the videos.

This lack of recognition contributes to the patterns of violence which have resulted in police killings nationally of George Floyd, Breonna Taylor, and Elijah McClain in 2020 and the following deaths at the hands of the Austin Police Department from 2000-2020: Mike Ramos (2020), Mauris DeSilva (2019), Hugo Alvarez (2018), Aquantis Griffin (2018), Victor Sanchez Ancira (2018), Leslie Salazar (2018), Thomas Alvarez (2018), Landon Nobles (2017), Morgan Rankin (2017), David Joseph (2016), Larry Jackson, Jr. (2013), Ahmede Jabbar Bradley (2012), Maurice Paladino (2012), Byron Carter Jr. (2011), Devin Contreras (2010), Nathaniel Sanders Jr. (2009), Kevin Brown (2007), Daniel Rocha (2005), Michael Clark (2005), Jesse Lee Owens, Jr. (2003), Lennon Johnson (2003), Sophia King (2002), Jose Navarro (2001), Joel Hernandez (2001), Kevin Scott (2000), to name a few.[5]

RECOMMENDATIONS:

- There needs to be explicit acknowledgement of the embedded racism and cultural narratives in the videos. Issues of White supremacy, as well as race, gender, class, and other inequities in our community, should be explicitly

[5] "Use of Force Deaths in Austin, TX," National Association for the Advancement of Colored People (NAACP) – Austin branch, http://www.naacpaustin.com/use-of-force-deaths-in-atx.html. City of Austin 2018 Officer-Involved Shooting Report, Office of Police Oversight, June 2020.

discussed throughout the training modules, not just included in one or two sections.

- Find new training videos that offer a much more diverse representation of the demographics of both the Austin community and the APD force. Videos should portray multiple points of view and depict a diversity of community interactions, for example with women, the elderly, youth, LGBTQ, etc as well as different ages, races, ethnicities, abilities, individuals who are non neurotypical, etc. Special attention should be paid to the types of interaction portrayed so as not to overrepresent communities of color in violent interactions or overrepresent White community members in storytelling.
- Support APD trainers to build their capacity to analyze videos more fully and critically in terms of race, class, and gender equity. This capacity should be built in collaboration with community experts who are well versed and experienced in facilitating these conversations and integrating this type of analysis.
- Ensure that the privacy and dignity of all persons depicted in videos are upheld by blurring faces and nudity and deleting names.

Pattern: Overrepresentation of "What Not To Do" Videos

Over half of the videos that we reviewed displayed officers engaged in behaviors and practices they should NOT be doing, and a large proportion of those videos displayed officers using excessive force or making other grievous mistakes. We have termed these videos as "What NOT to Do" videos. These videos are very problematic. ***The continuous repetition of 'What NOT to Do' interactions actually reinforces negative behavior; can lead to officer desensitization about abuse, injustices, and corruption; and dehumanizes the community that the officers are sworn to protect.*** Only a very small percentage of videos we reviewed were examples of what officers SHOULD be doing, and even those contained content that was sometimes deemed problematic by the review board.

RECOMMENDATIONS:

- Integrate adult education methods that prioritize methodologies that support adult learning. Watching videos about "What NOT to do" is not the best approach. APD should emphasize videos that demonstrate and reinforce positive behaviors rather than videos that display and reinforce bad conduct.
- Prioritize a few "What NOT to do" videos that could be part of a deeper analysis and discussion in the classroom about the larger dynamics that tend to produce undesirable results.
- When we encouraged the trainers to identify positive, intentional 'what to do' videos, we were told that they would be hard to find. This serves as an argument for allowing time and resources for trainers to research material and to engage in creative strategizing to create, identify, or locate the types

of videos instructors need. The difficulty in finding such material quite likely also speaks to a broader nationwide dearth of appropriate, good quality police training videos and would suggest the need to review other police department training materials.

- Make de-escalation a much higher priority in the training and include more videos that demonstrate de-escalation without the use of a firearm.

Pattern: Ineffective Language and Neglected Power Dynamics

In all modules, but especially in the Tactical Communications section, we observed that the attempt to demonstrate professional verbal interaction often portrayed that communication unrealistically, with an emphasis on repeated stock phrases that have limited use in reality. Impersonal recurring phrases included: "cooperate so we can get you out of here quickly," "we want to get you home," "we're on your side," and "we want to hear your side of the story." Such examples not only come off as artificial and contrived but as essentially dishonest. The portrayal of them in the videos was stilted and reinforced that these ways of talking are not natural to the officers employing them.

We noted a stark contrast between the examples offered in the videos and the examples offered by the training officers themselves in our discussions. The instructors were able to demonstrate the sorts of communications they would offer in ways that were quite natural and believable. Our concern is that such examples as presented in the videos discourage rather than model the training of effective non-biased communication.

We also observed that the phrase "stop resisting," while frequently heard in videos, is not used in everyday language. In videos it was not clearly understood by community members with whom officers were interacting and tended to escalate the situation. More often it seemed to be used as a technique to justify use of force: in a number of videos we saw police officers shout it to people who were not resisting and were trying to comply with the officer's instructions. Police officers need to be trained in more effective, relatable language and strategies.

In particular, generalized instructions on compliance seem particularly ineffective with communities who are traumatized by the hyper-criminalization of their neighborhoods and whose families and communities have been disproportionately negatively impacted by the criminal legal system. This reinforces a dynamic of dominance which requires total submission in order to survive while more privileged communities are treated with respect and dignity. Even when officers in video footage communicated what appeared to be a genuine and sincere desire to help, they seemed unaware of their unmistakable position as representatives of state authority and how that authority creates a barrier, at least, to providing that help.

They did not portray an understanding of the unequal power dynamics inherent between police and members of the public.

Cadets need to be educated about these obstacles and provided with tools to navigate both the relative power dynamics between officers and the public and their own trauma and emotions. The phrase "I'm here to help" simply will not be heard the same way from a uniformed officer with a gun and the power of arrest as from a neighbor or a social worker. Given this power differential, any such offers of help may be perceived as orders. Furthermore, if a civilian is exhibiting fear or trauma responses because of the power differential, those responses may be perceived as suspicious or threatening by the police officer who may escalate the situation. Expectations formed from the other training videos that reinforce the perception of certain community members as more dangerous, as well as the lack of a fully effective Crisis Intervention Training, exacerbate this likelihood.

RECOMMENDATIONS:

- Trainers need to explicitly acknowledge race, class, and gender dynamics at work in the interactions with community members displayed in these videos. Trainers should not avoid these dynamics or focus, as they currently do, solely on an individualized framework; i.e. a police officer's "professional" versus "personal" face.
- Inculcate a culture of attention to social and emotional intelligence and develop successful coping strategies for officers throughout an officer's service through consistent policies and practices.
- Include explicit training in how to build rapport with the community and connect with community members in ways that are honest, transparent, and authentic rather than using detached, formal "police" language.

Pattern: "Us Versus Them" Mentality

One of the more pervasive biases we observed is the us-versus-them mindset. This bias existed at a fundamental, pervasive level, further informing other biases with respect to race, ethnicity, class, gender, and ability, and affected officers of color and female officers in the same or similar ways as White male officers.

The us-versus-them bias was explicit in some of the videos--i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:

- An enhanced focus on officer safety over the safety of the community as a whole,
- A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"

- An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and
- Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.

Primarily this bias manifested in a focus on police officers "winning" by overcoming resistance and threat from the community or by prevailing in court or in grievance and complaint hearings. ***It is counterproductive to frame interactions with the public as a contest in which the police should focus on "winning." This cannot help but set up the public in the position of "losing" in encounters with the police.*** The focus turns from compassion to conquest as officers see community as a roadblock in their effort to control and "win." In the end, communities will continue to suffer, as there is no viable way to "win"--not only against police officers, but also against the system that continues to protect police officers in this us-versus-them framework.

We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.[6]

We would like to call attention to Dr. Sara Villanueva's report referencing the paramilitary culture of both APD and particularly the training academy. We observed a paramilitary training style in some of the videos we reviewed. Dr. Villanueva states:

> *There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-oriented police service model. A growing body of research has shown that paramilitary-structured academies do not align well with the*

[6] In the past few decades, since 9/11, for a variety of reasons and by means of a number of local, state and federal programs, police departments, including APD have grown more militarized, not only or even primarily in terms of equipment, but also in terms of broad perspective. One of the most problematic dynamics of the national funding sources for the increased militarization of police departments is the way it skews accountability away from the local community and toward the broader state or federal sources of that funding. Cf. Also, https://www.pnas.org/content/115/37/9181 (actual report)
https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communities-study-finds (easier to read report)
https://www.aclu.org/issues/criminal-law-reform/reforming-police/war-comes-home?redirect=war-comes-home-excessive-militarization-american-policing

principles of community policing and problem solving which are based on collaborations and partnerships.[7]

RECOMMENDATIONS:

- The training and training videos should be more focused on serving and protecting the community instead of its current focus on the "warrior" mentality which views the community as the "enemy."

Pattern: Dramatic Reinforcement of the "Danger Imperative"

Connected to both increasing militarism and the us-versus-them dichotomy, which we believe is at the heart of the repeated instances of police overreactions to threat and use of excessive force, is what researchers have called the "danger imperative"--a belief in a constant and prevalent danger for police officers. APD is not unusual in this regard. A significant number of training videos in most police academies focus on interactions where officers' lives are under threat or in significant danger. Several of the descriptions of the training materials in use at the APD academy state this plainly. However, statistics from both the FBI Uniform Crime Reports (compiled by departments' self-reporting nationwide) and the US Bureau of Statistics show this emphasis to be disproportionate to the actual danger an officer is likely to face. Policing is among the top 20 most dangerous occupations, but it is near the bottom of that list, according to Department of Labor statistics.[8]

Violence against police has been dropping for the past five decades, while police violence against the public remains steady. Ambush killings of the police are down 90% since 1970 according to a longitudinal study in the *Police Quarterly*.[9] Police officers are several times more likely to die in an automobile accident, but still routinely refuse to wear seatbelts because they don't want to be hindered from exiting a vehicle should they be threatened with deadly force, a far less likely occurrence.[10]

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[7] Villanueva, Sara, *et. al.*, *Review Analysis and Strategic Plan* for the Austin Police Department Training Academy, May 2020 (p.10).

[8] https://www.bls.gov/iif/oshcfoi1.htm#rates

[9] White, Michael D., "Ambush Killings of the Police, 1970-2018: A Longitudinal Examination of the 'War on Cops' Debate," *Police Quarterly*, 0(0) 1-21, Sage, 2020. Between 1980 and 2014, an average of 64 law enforcement officers were feloniously killed each year. There are over 600,000 police officers in over 18,000 agencies in the US. Construction workers and farm laborers have similar rates of on-the-job deaths. Steel workers, truck drivers, and farmers/ranchers die on the job at twice that rate. Trash collectors and roofers die three times as often. Airline pilots and fishery workers die four times as often. Loggers die seven times as often on the job. With the exception of truck drivers, none of those other dangerous occupations kill others frequently in the performance of their duties. Cf. also, "Disaggregating the Police Function, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3564469#:~:text=It%20proposes%20a%20totally%20novel,safety%20from%20the%20ground%20up

[10] Sierra-Arévalo, Michael, American Policing and the Danger Imperative (November 1, 2016). Available at SSRN: https://ssrn.com/abstract=2864104 or http://dx.doi.org/10.2139/ssrn.2864104

However, despite the statistical evidence, officers are trained to view every encounter as potentially life-threatening. While any given encounter with the public may indeed pose some degree of danger to an officer, the fact that across the United States 600,000[11] officers constantly ready to escalate situations out of fear for their safety poses a much greater threat to the public they serve. If officers are trained to view every person they encounter as a potential "cop-killer," then bodies already perceived by our larger society as inherently dangerous, such as young Black males, will inevitably bear the brunt of that fear. Further, the central dynamic of policing--to control the public in every encounter with them--will tend toward unnecessary escalation when that control is perceived as being resisted, something that occurs far more frequently when officers interact with People of Color.

One of the training officers acknowledged that there has been an overemphasis on an officer "going home at the end of the shift" for some time in policing and police training. The training we reviewed, particularly the training highlighting the danger imperative, definitely emphasized the safety for the officer above all else. ***We believe the emphasis should be on maintaining the safety of everyone in police interactions with the public. The goal should be for <u>everyone</u> to go home safely.***

RECOMMENDATIONS:

- The curriculum needs to address the impacts officers' choices have on individuals in the community. Cadets need to be continually reminded that their actions and choices may have profound and lasting impacts on individuals' lives.
- Introduce explicit and in-depth training in ways to mend relationships and rebuild trust with the community after bad actions by the police: from empowering individual officers to speak out after witnessing behavior ranging from merely inappropriate to criminal, to articulating the responsibilities, institutional expectations, and departmental practices in relation to the community when community standards are transgressed.

Pattern: "A Few Bad Apples" Theory of Police Accountability

We noted in our review the way in which examples of bad or even criminal behavior on the part of police officers in the videos was explained as being the result of individual bad actors. Repeatedly, the training officers expressed surprise over how officers in the videos acted, claiming they did not understand what those officers were thinking or why they were acting the way they acted. This is part of a nationwide trend to excuse this behavior as the product of a few "bad apples" rather than as the natural, even inevitable, consequences of larger biases and power

[11] https://www.statista.com/statistics/191694/number-of-law-enforcement-officers-in-the-us/

dynamics at work across police departments and society more broadly and of the structures and traditions of policing itself. The view that systemic problems are the result of individual police officers not properly following their training or lacking the appropriate attitude or temperament for policing prevents departments from properly addressing these prevalent and continuing patterns.

From what we observed in videos and with conversations with instructors, we contend that the structure of policing as a whole, particularly the focus on control and the warrior mentality, reinforces the us-versus-them dichotomy in ways that tend toward escalation and grievous mistakes in judgment. These patterns of police behavior are inseparable from the history of policing and how police practices have evolved to the present day. It is also tied to larger cultural narratives which engender perceptions of People of Color, women, gender-expansive individuals, the differently abled, and working class people as inherently less worthy of respect, or inherently suspicious, dangerous, and in need of "control."

A lack of awareness of these broader cultural biases that influence interactions with the public in ways unconnected to individual professionalism underscore the need for incorporating the proposed course on History of Police and Race in America course into the training academy curriculum. ***Without this foundation training that addresses racism and other forms of oppression and an awareness of and sensitivity to the intersectional identities that people live, the training will fall back on the popular narratives and frameworks that it already presents throughout the training modules***

If we continue to treat the problem as individual aberrant behavior and try to address it through individual disciplinary actions that clearly are not working even when they are (rarely) imposed, we will make little progress. The problems are systemic and must be addressed through cultural change and system-wide training that recognizes the role that police structure and history plays in producing them.

RECOMMENDATIONS:

- We wholly support the addition of the proposed course on History of Police and Race in America into the training academy curriculum.
- The proposed training in the history of policing should be a foundational module which precedes the skills-building training modules. We would recommend that additional coursework be incorporated that addresses implicit bias and cultural humility.
- In a hierarchical organization like APD, incoming, lower-ranked cadets are not effective levers of cultural change. In addition to revamping the cadet training academy, APD needs to undertake retraining of current officers to

respond to these critiques of the current training. It is not enough to revise the training solely for new staff.

- New cadets are being introduced to an established system with an entrenched ethos and worldview. The police department leadership would need to commit and follow through with cultural change through policies, practices, and expectations in order to change the academy. The department can't change through training alone.

Pattern: Emphasis on Transactional Interactions

Many videos emphasized a "transactional" approach to interacting with the community, rather than long-term relationship building to develop genuine, authentic relationships; i.e., "The Memphis model."[12] ***The main goal of many of the videos appeared to be teaching officers how to protect and safeguard themselves against complaints, reduce potential liability, and be prepared for court appearances rather than engaging with the community authentically, humanely, and ethically.*** This transactional approach was evident across modules, where cadets were encouraged to perform a show of humanity or behave in productive and community-oriented ways in order to gain compliance or avoid fallout from community complaints or legal action against them. The theme, explicit in several videos, was clearly that officers should treat people with respect for a specific and self-interested goal, rather than teaching that officers must treat people with respect because that is what they are due. It is deeply problematic to train cadets that acting appropriately with the public has a price tag in the form of some expectation of return.

RECOMMENDATIONS:

- What was apparent throughout the videos was wide-scale dehumanization and a lack of community accountability. We encourage APD to explore what community accountability should look like in direct consultation with the most directly impacted communities.
- Undertake a community review of the academy training, including a review of all videos every two years until APD has established trust with the community, after which the review process could be extended to every five years.

Pattern: Inappropriate Use of Mass Media News Clips

[12] The Memphis model was cited in one of the Crisis InterventionI training videos, but it was unclear whether APD has fully adopted and integrated this model. We believe it should be a priority orientation for all units, not just Crisis Intervention. The ethos of the Memphis model --"they treated me like a human not a perpetrator" -- should be for everyone.

A final pattern we noted concerns the source of the video clips. It appears that APD acquires some core sets of training materials from third-party sources, with individual training officers given the option to find any additional or alternative material. It does not appear that they are provided with a great deal of support or resources in their quest to find appropriate materials; it appears they often resort to reaching out individually to colleagues within APD or in other police departments to identify body cam footage that may be applicable to their teaching objectives. As a result, a number of the videos were gathered from very problematic video sources. In addition to Verbal Judo, T-COLE, PERF--many of which were outdated and were rife with stereotypes--we saw footage that was taken from questionable websites such as www.TheYnc.com and Thin Blue Line.

Many of the training videos used are sourced from mass media news clips and other online or social media outlets. There are several problems with using such material. First, mainstream journalists' primary priority is capturing and holding attention, often accomplished by stirring fear or otherwise sensationalizing interactions. Frequently, videos were overlaid with sensationalized music as well as explanatory commentary which was, at best, tangential to the training needs of the curriculum, and, at worst, actively working against the objectives of the training by skewing and dramatizing the material. Even if such narratives are challenged by the trainer, the cadets will still hear the commentary which speaks in the voice of the "public" tacitly or explicitly authorizing the police behavior. The commentary often borrows from and perpetuates popular narratives about both the world and certain "kinds" of people, offering a cartoonish breakdown of people as either "good guys" or "bad guys," usually simply on the basis of their roles or racial/class/socioeconomic status. The commentary exaggerates danger in ways that feed into narratives the public already accepts about what kinds of people are "dangerous." This reinforces unquestioned biases the cadets may bring with them into the training. It is not possible to tell a complex story about historical structures and dynamics in a two-minute news clip. Instead, news outlets recycle the same stereotypes and stories we already know and believe. ***The point of the training videos is to educate; using sensationalized news clips is counterproductive to that goal due to the "reality effect" that visual media imparts.***[13]

Some of the training material was even taken from Hollywood movies. ***No serious or real training value can be gleaned from Hollywood fantasies about the world.*** Training material should remain focused on the actual world. A particularly problematic example was drawn from *The Last Samurai*, exemplifying the cherry-picking of Eastern Cultures out of context (also present in several forms in

[13] Bourdieu, Pierre, *On Television* (New York: New Press, 1998), 21. Bourdieu argues "that images...show things and make people believe in what they show." Not seeing images has the effect of hiding them not only from our view, but from our consideration as a part of reality.

other training material, such as "Verbal Judo" and "Mushin"). ***Training material should avoid cultural appropriation.***

A number of the videos depicted outdated and stereotyping pop culture. The "humor" clips included cultural appropriation, and/or reinforced dated notions of policing, masculinity, gender norms, People of Color stereotypes, veneration of guns, etc. The comedy clips would likely appeal to particular audiences and would not necessarily resonate with a younger, more diverse cadet class. These videos need to be updated and made more inclusive, if used at all.

RECOMMENDATIONS:

- Overall, the APD videos need to be updated and refreshed. The training team should look for more interactive, engaging training videos with more dynamic storytelling. We recommend utilizing fewer, high quality videos for multiple modules which allows cadets to focus on different aspects of learning using the same scenario. While each module has distinct learning objectives, reemphasizing important skills like tactical communications, crisis intervention, and de-escalation strategies should happen continuously throughout the training so cadets can more fully integrate those skills into their approach to each situation that arises.
- The APD Training Academy should rely less on videos and instead facilitate more interactive roleplay as a more effective teaching tool.

III. INSIGHTS INTO THE APD TRAINING ACADEMY CURRICULUM AND PROCESS

In addition to watching the videos individually, the review process gave the panel a window into the overall training framework. We have the following observations about the training structure and the sequencing of the training modules, and also about our review process:

Ineffective Adult Pedagogy

While training officers are clearly interested in and working at developing better adult learning pedagogies, Dr. Sara Villanueva's report to the APD clearly articulated a series of steps to improve this effort for the academy.[14] We recommend that the APD Training Academy reach out to and utilize the expertise to be found at the University of Texas, Huston-Tillotson University, Southwestern University, St. Edward's University, and Austin Community College for help both in finding or

[14] Cf., Villanueva, Sara *Review Analysis and Strategic Plan* for the Austin Police Department Training Academy, May 2020

developing training materials and videos and facilitating training pedagogy and curricula including training the trainers.

Our review of the videos and concomitant interaction with APD trainers also made clear to us that the trainer is critically important. The trainer should be versed not only in the penal code but also in broader human interaction skills and psychology as well as the larger cultural issues so instrumental in shaping how police interact with the public.

RECOMMENDATIONS:

- The APD Training Academy curriculum should be extensively revamped, as outlined in Dr. Villanueva's report.
- Properly vetted subject matter experts outside of the department (including community members with lived experience and expertise in these areas) should be brought in as trainers to augment the APD training team and help train the trainers.
- The Austin City Council should create a paid community advisory board that serves as a resource to APD on an ongoing basis to develop trust and transparency with the community about its policing policies, training and practices, and facilitate the broader use of community resources.

Lack of Overall Coordination

There appears to be a lack of overall coordination, communication, and shared learning techniques among the trainers. Each training module appears to be very siloed. Trainers do not have a clear idea what is being taught in other sections and don't appear to regularly communicate with each other in order to reinforce and integrate previous learnings into the training content. As a result, the training modules are somewhat repetitive without building and expanding on each other. More worrisome, as mentioned above, is that training videos seem to contradict each other when a video shows what NOT to do from a previous module but then is left unaddressed in the current module.

The lack of coordination between trainers of different modules exacerbated this dynamic of overrepresentation of People of Color in disturbing situations and "What NOT to Do" videos by allowing for a perhaps unintended proliferation of these kinds of videos without a specific awareness of the pattern on the part of the academy as a whole. This kind of unintended result argues forcefully for better coordination of the curriculum and closer interaction among the trainers. Too frequently over the course of this process we repeatedly heard the phrase from the trainers: "I don't teach that section... I don't know what they do in that section."

RECOMMENDATIONS:

- The training would benefit from less siloing and better integration among the training modules and better communication among the trainers so that they are aware what each trainer is teaching and how best to sequence the videos.

Ethics and Crisis Intervention Training Isolated

According to the training officers, "ethics in policing," including when and how officers should intervene when a fellow officer is doing something wrong is addressed in a separate half day "ethics" unit. Treating "ethics" as well as the Crisis Intervention Training as isolated and tangential aspects of the training and police work is a problematic approach that fundamentally misunderstands the way ethics works in society and for individuals. In all of the many "what NOT to do" videos, NONE of them shows any fellow officer intervening.
In general, we observed an overall lack of discussion about whether a particular action or response was ethical.

RECOMMENDATIONS:

- Rethink the order of the training. **The order in training matters.** Tactical communications and Crisis Intervention should be shown early on and be better integrated, and later interactions in subsequent videos should be evaluated based on Tactical Communication and Crisis Intervention tools. Ethics training should permeate every section.

Concerns About Process

In the beginning, as participants engaged in the video review process, there was confusion over our role and how much control/influence that we would have over the process. Many of us assumed that we would be seen as consultants and would be able to let our coordinators know what we needed in order to do our jobs well. However, we quickly ran into problems with being denied information that we requested. The academy trainers emphasized several times that we were unable to grasp the full context because we were only seeing some of the videos or the training material, but we were then denied access to the other material that would have helped us gain a greater understanding of the training.

Additionally we encountered other barriers to full participation. We understand that for many anti-racist initiatives, information is collected in a report and put in a drawer never to be seen again. We watched videos with extremely traumatic content and subsequently engaged in detailed and explicit discussions; it was important for us to make sure it was worth it. We wanted to be clear about where

our analysis and feedback was going, how our recommendations would be implemented, and how the process would be transparent to the community.

During the beginning of the process, our group experienced two major obstacles:

1. Unrealistic timeline laid out by the City of Austin
2. Austin Police Association intimidation tactics

At the beginning of this process, our group was tasked with an impossible two-month timeline for reviewing all the videos. We knew we could not possibly provide the level of quality feedback we felt was warranted given this rushed process. The City of Austin has a reputation for appearing to rush community input in order to provide a stamp of "good faith" effort, engaging in little to no communication as to how these recommendations would be implemented to generate much needed change. After several discussion sessions, we agreed to extend the process and enlist a new vendor to assist with facilitation; namely, Life ANew. Our group facilitators from Life ANew were Sherynn Paxton and Randy Chivas. Thanks to them, the relationship between APD and the community review board dramatically improved.

It should be noted that during the process of raising our critiques and adjusting to new procedures, we also experienced an attack from the Austin Police Association (APA) regarding our process. This led to further distrust in an already sensitive relationship between the community review board and APD staff. Our group made a good faith effort to engage in this review process after watching several community organizations terminate their relationship with the APD. This attack from APA demonstrated the existence of a faction within policing that is opposed to the transformation we are attempting to facilitate and is intentionally spreading a very different message than APD and city leadership have communicated about the need for change.

It is a devastating commentary on the current police-community relations that community members felt endangered while involved in this review process. Several community members were actively threatened by APA representatives. APD and the Austin City Council need to hold APA accountable.

After finalizing our panel's work, we continue to have questions about the transparency and accountability of this review process as well as the broader review process outlined in Resolution 66. Some questions are:

- How will the results of this review be presented to the community?
- What is the timeframe and process for APD to review, respond to, and implement the recommendations made by this panel?

- How do APD and the City of Austin plan to hold themselves accountable and be transparent to the community?

While this process was challenging, we were able to engage APD instructors who answered our questions patiently and offered creative solutions to implement the changes we were suggesting. There were indications that some of the APD staff were listening to the concerns we raised and working to understand the perspectives offered. Several of the trainers were present for almost all of the sessions, and collaboration with them helped to achieve better results. We believe such officers demonstrate a growing desire to engender important and essential change within the academy and the police department as a whole and share our vision of better training for future cadets and a better police department for Austin and its diverse communities.

IV. CONCLUSION

While this process has given us valuable insight into the cadet training videos, the contributing factors that led to the formation of this panel review and to Resolution 66 are much bigger than video selection. The patterns and biases that we witnessed in videos were pervasive through each module because they are reflective of the patterns and biases we see everyday, everywhere. These patterns and biases are indicative of the systemic racism that corrodes the integrity of our institutions in Austin and across the country, *including* the police. They cannot simply be edited out of a video. They cannot be "trained" away if there are no changes in how the department is structured and how police work is done. Changing these patterns and biases cannot solely be the responsibility of the newest, lowest ranked officers who are entering a well-established, hierarchical culture that was founded on and continues to perpetuate systemic racism.

Accountability is a foundational requirement in all of our recommended changes. While we fervently hope that APD leadership agrees to make the changes we have outlined in the detailed list of recommendations, the culmination of a thorough seven-month review process, we know that nothing will fundamentally change unless APD also implements a detailed accountability framework, the specifics of which are necessarily outside the parameters of this report. **We recommend that APD collaborate with the City of Austin's Reimagining Public Safety Taskforce to develop further recommendations for an accountability framework.**

Undoing systemic racism requires systemic changes. It requires a cultural shift towards community respect, accountability and trust. It requires showing trustworthiness before a crisis occurs, not in a slapdash effort after the fact. It requires deep listening, authentic dialogue, and consultation with the communities most directly impacted by police violence. It requires the courage and skill to hold

difficult conversations throughout the department and confront world views that perpetuate these biases rather than take a colorblind approach. It requires a shift from “what can I legally do?” to “what does the community need me to do?”

This video review process is but a step in the right direction. Implementing the recommendations from this process is another step. The department will have to decide how far it is willing to walk to make systemic change happen.

In conclusion, we would like to thank the following people who joined us in this review process: Kellee Coleman, Rocio Villalobos, Sherwynn Patton, Randy Chavis, Dr. Sara Villanueva, Anni-Michelle Evans, Gary Carillo, Patricia Bourenane, Lt. Eve Stephens, Farah Muscadin, and Veronica Ferren.

COMPLAINT
EXHIBIT D

Kroll | A Division of DUFF & PHELPS

MEMORANDUM

TO: Farah Muscadin
Director, Office of Police Oversight

Nuria Rivera-Vandermyde
Deputy City Manager

FROM: Kroll Associates, Inc.

DATE: February 26, 2021

RE: Preliminary Assessment of Austin Police Training Academy

Introduction

On November 12, 2020, the City of Austin's Office of Police Oversight (OPO), in consultation with the City Manager's Office (CMO), retained Kroll Associates, Inc. (Kroll) to review and evaluate the Austin Police Department (APD) on the extent to which forms of racism, bigotry, and discrimination are present in the protocols, practices, and behaviors of the APD. The initial phase of Kroll's review is limited to an assessment of the APD Training Academy (Academy), including its ability and readiness to prepare cadets for policing in a multi-ethnic, diverse urban population consistent with best practices.[1]

We understand that the City of Austin (City), as expressed through City Council Resolution 66 and the work of the Reimagining Public Safety Task Force, and as articulated in the 2020 Strategic Plan of the APD Training Academy, seeks a transformational police academy that transparently addresses issues of racial and gender equity, emphasizes de-escalation tactics that minimize the use of force, and moves away from a regimented, paramilitary culture into a learning academy that "promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships."[2]

In assessing the Academy to date, we have examined a series of independent reports (listed below) concerning various aspects of the training academy pertaining to culture, teaching methods, racial and gender equity, and course content; interviewed APD and Academy leadership, instructors and other active and retired personnel, former APD cadets, community leaders and activists, outside consultants and academic experts, and City personnel in the CMO, OPO, and Equity Office (further details below); and begun researching best practices in police training academies. We have also requested, received, and started reviewing a large volume of documents from the APD, including: Academy curricula, course content and lesson plans, instructor CVs, organizational charts, policy manuals, procedures and protocols, statistical data, cadet manuals, class schedules, recruitment materials, employee rosters with race, gender and other demographic breakdowns, and other documentation and data.[3]

[1] Kroll's retention is pursuant to contract MA 4400 PA210000018.

[2] Report of Dr. Sara Villanueva ("Review Analysis and Strategic Plan"), page 13 ("2020 Strategic Plan"), May 2020.

[3] The proposed curricula for DEI-related courses in the 144th cadet class are currently being developed by the Academy, pending the anticipated assistance of the new Organizational Training and Development Manager (ODTM), once onboarded.

In carrying out our mandate, we have specifically reviewed the following independent reports and assessments:

1. APD Training Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020)
2. APD Training Academy Curriculum Review by Dr. Miguel Ferguson (June 19, 2020)
3. Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications (December 14, 2020)
4. Racial Inequities and Institutional Racism, Joyce James Consulting (November 2020)
5. Community Report: Video Review Panel (January 18, 2021)
6. Community Video Review Panel (CVRP): APD Training Academy Videos, Final Report (January 14, 2021), and CVRP Summary Reports from July 2020 to November 16, 2020 (noting APD's concurrence with CVRP's recommendations).

We have also conducted over 45 interviews and meetings with a broad array of stakeholders (more than 70 individuals) over the past two months, including:

- Dr. Sara Villanueva ("APD Training Academy Review Analysis and Strategic Plan");
- Dr. Miguel Ferguson ("APD Training Academy Curriculum Review");
- City of Austin Equity Office staff ("Community + APD Equity Assessment Series");
- Community Video Review Panel ("Community Video Review Panel Report");
- Joyce James Consulting staff ("Racial Inequities and Institutional Racism");
- Austin community leaders (Just Liberty, NAACP, Austin Area Urban League, Austin Justice Coalition, and Texas Appleseed);
- Greater Austin Crime Commission;
- Civilian Police Review Commission;
- APD leadership (Chief Brian Manley and Chief of Staff Troy Gay);
- Academy leadership (Assistant Chief Brent Dupre, Commander Mark Spangler, and Commander Catherine Johnson);
- Academy supervisors – Training and Recruiting Units;
- Academy Instructors;
- Representatives of the Austin Police Association and its various affiliates (Austin Police Women's Association, Lesbian and Gay Peace Officers Association, and Texas Peace Officers Association);
- Former APD Training Academy cadets; and
- City of Austin officials and staff.

Additional interviews and meetings are ongoing.

Although our work remains in the developing stages, we offer this preliminary set of findings and recommendations at the request of the CMO given the sense of urgency facing City stakeholders in deciding whether and when to re-open the Academy for the 144th cadet class, which was originally scheduled to begin on March 29, 2021. The findings and recommendations in this memorandum are preliminary in nature and are based only on the information we have gathered and reviewed to date. As additional work and analysis remain to be done, the below findings and recommendations are subject to modification and revision as we gather and review additional information and as the Academy further updates and refines its preparations for the 144th cadet class.

Preliminary Findings

Based on our work to date, we highlight the following findings and observations that reflect on the readiness of the 144th cadet class in light of the City's stated objectives:

Diversity

- Academy leadership and supervisory staff currently reflects a significantly improved level of gender, racial, and ethnic diversity than in years past.
    - The ten APD personnel who make up the ranks of Academy supervisory staff in the Cadet Training Unit (Commander to Corporal) include three females (Commander, Lieutenant of Cadet Training, and Sergeant of Learned Skills); two African American males (Sergeant of Cadet Training and Corporal of Learned Skills); and one Latino male (Sergeant of Cadet Training). One of the females is also of Pacific Islander descent.
    - Similarly, the Recruiting Unit supervisory staff presently consists of five APD personnel from Commander to Sergeant, including two females (Commander and Sergeant of Recruiting) and two African American males (Lieutenant of Recruiting and Sergeant of Recruiting II).
    - The Recruiting Unit also includes significant racial, gender, and ethnic diversity at the officer and civilian ranks.
- Academy instructors on the whole are far less diverse. Although there is a sprinkling of female, African American, and Latino instructors, the officer ranks continue to be dominated by white males (although this appears to be slowly improving).
    - Leadership is well aware of the need to further increase racial, gender and ethnic diversity among the ranks of Academy instructors, and they are actively in the process of recruiting diverse officers to fill the ranks of current vacancies.
    - There seem to be a variety of reasons why the Academy has had difficulty increasing diversity among its pool of instructors, including financial disincentives (a loss of overtime and shift differential pay), physical fitness requirements, and a perception that instructor positions lack prestige or a pathway to promotion. Kroll notes, however, that other professional benefits counter these perceived disincentives, including better work schedules, additional training opportunities, access to Academy exercise facilities, and the satisfaction of teaching future officers.[4]
    - Although the Chief has authority to unilaterally order transfers to the Academy in an attempt to increase diversity, he has traditionally been reluctant to do so.
- The APD Recruiting Unit contains a diverse team of recruiters and background investigators and has developed a broad and effective outreach program that extends to other cities and states targeting historically black colleges and universities, Latinx organizations, military veterans, and women's organizations, among others. As a result, the list of 95 eligible candidates who are

[4] See APD Training Academy Curriculum Review, page 4 (discussing Instructor Surveys) (June 19, 2020).

currently expected to attend the 144th cadet class consists of one of the most diverse group of recruits in recent APD history, as reflected in the below chart (updated 12/10/2020):[5]

Gender	Asian/Islander	Black	Hispanic	Other	White	Grand Total	Percentages
Female	1	3	2	0	10	**16**	17%
Male	4	10	29	3	33	**79**	83%
Grand Total	**5**	**13**	**31**	**3**	**43**	**95**	
Percentages	**5%**	**14%**	**33%**	**3%**	**45%**		

- These future cadets are undoubtedly being recruited by other sources of employment. It would be a lost opportunity in addressing long-term diversity goals if this diverse cadet class were to become diluted.

- In addition, the 143rd cadet class, which graduated in October 2020, was 50% white, 33% Hispanic, 12% Black, and 2% Asian. This compares somewhat favorably to the 2019 census estimate, which shows Austin as 48% white, 34% Hispanic, 8% Black, and 7% Asian.

- There are recent indications that APD leadership is making an intentional effort to enhance knowledge and understanding of racial equity issues. Within the past year, APD leadership attended multiple anti-racism workshops in an effort to address and better understand issues of systemic and institutional racism within the department. For example, in February 2020, Academy leadership and cadet instructors attended *Beyond Diversity: Courageous Conversations About Race*, led by Dr. Glenn Singleton. In September 2020, 18 APD leaders attended a two-day "Groundwater Analysis of Racial Inequities" workshop led by Joyce James Consulting LLC. By all accounts, both seminars were well received, with some talk among APD leadership of possibly incorporating one of these workshops into cadet training or annual training for Academy instructors.

- The Academy appears to do a good job of training cadets on LGBTQ issues, with two hours each of course content devoted to policing and transgender issues taught by an openly transgender instructor, and an introduction to LGBTQ issues taught by Sergeant Michael Crumrine, the president of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement. The Academy also appears to do a good job recruiting in the LGBTQ community. The APD as a whole, however, needs improvement in training and educating officers on a department-wide basis.

- The Academy has developed a valued mentorship program for women cadets to help prepare and guide them through the Academy.

[5] Data and classifications provided by APD.

Paramilitary Culture

- The Training Academy remains a predominantly paramilitary training model, albeit with a greater emphasis than in years past on a classroom-based, learning-institute style of teaching.
    - Although most Academy leaders describe the Academy as a "hybrid" model closely associated with a paramilitary model but tampered with a mix of adult-learning courses, the reports of Dr. Villanueva and Dr. Ferguson, and interviews of Academy supervisors and instructors, suggest the paramilitary model continues to predominate.
    - Three frequently cited examples of the Academy's transition away from a paramilitary format include: First, the Academy has eliminated the requirement that cadets "make a hole" whenever an instructor or supervisor walks through the hallway (cadets were formerly required to stand at attention against the wall so that senior personnel could get through). Now, cadets are encouraged to extend a handshake, introduce themselves, and engage in conversation. Second, cadets are no longer required to wear camouflage, military-style attire as the uniform of the day in Academy. Third, there is less one-on-one, in your face stress actions (yelling and screaming), which are now more group focused.
    - Cadet surveys administered by Dr. Miguel Ferguson after the 141st and 142nd cadet classes suggested that most courses continue to be taught in a highly formalistic manner, with cadets yelled at, berated, and degraded by instructors in certain classes. Moreover, according to Academy instructors and supervisors with whom Kroll spoke, the Academy continues to impose behavioral modification exercises (i.e., group calisthenics and exercise drills at the sandpit) as collective discipline for cadet mistakes and compliance failures.
    - To date, it appears that the adult learning-style of teaching as discussed in Dr. Ferguson's and Dr. Villanueva's reports is not in widespread use and that efforts to update course content with adult learning strategies are on hold pending the hiring of Dr. Villanueva's replacement as Organizational Training and Development Manager (ODTM).
- APD leadership has expressed its belief to Kroll that a paramilitary structure is an essential component of police culture and paramount to ensuring cadets are attuned to the chain of command and know what to do and how to respond in crisis situations.
- The majority of APD and Academy leadership have questioned the assertion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a "warrior" mindset, which leads to an "us vs. them" mentality of officers on the front lines fighting crime.
- Although APD leadership dislikes the "warrior vs. guardian" nomenclature, the new Commander of the Academy said she believes APD should train its cadets to be "70% guardians and 30% warriors." "We are guardians, but we have to maintain a warrior mindset to stop immediate threats when they occur."
    - As an example, the Commander suggested to consider an officer assigned to protect school children. The officer is there as a guardian, but if a school shooting occurs, the officer needs to know how to become a warrior on the spot. That can only be learned at the Academy.

- The Academy has modified some past abusive practices, such as "Fight Day" and Stress Reaction Testing (SRT), in an attempt to reduce cadet injuries, lower the rate of attrition (which disproportionately impacted females and cadets of color), and create an environment more conducive to success and graduation.
    - Following the 141st cadet class, "Fight Day" was changed to "Will-to-Win" and is presently more structured and controlled than in years past, according to Academy leadership. The sparring instructors in the boxing ring are instructed to fight at 50% capacity (all cadets wear protective gear) and with no intent to injure cadets. The stated purpose of Will-to-Win is to ensure that cadets develop the mental fortitude and courage to keep fighting no matter what and to not give up, such as when encountering an acute situation while waiting for backup. The Will-to-Win exercise requires cadets to fight back and not quit for at least three minutes, the average time it typically takes for backup to arrive (the boxing component occurs after a series of other intense physical exercises designed to tire and stress cadets prior to entering the boxing ring).
        - Although the name has been changed, the essence of the exercise has not materially changed. It occurs prior to cadets being taught any self-defense or other hand-to-hand defensive tactics, which places them at a distinct, and arguably unrealistic disadvantage against skilled and experienced sparring instructors.
        - APD believes it is essential that cadets who have not experienced being physically assaulted or punched before arriving at the Academy should experience this for the first time in an Academy-controlled environment, and not in a hostile situation while on patrol after graduation.
        - Kroll notes, however, that APD personnel were unable to provide a persuasive rationale as to why such an exercise could not reasonably occur towards the end of Academy after cadets have received all essential defensive tactics training.[6]
    - Two white male instructors who were the most abusive during "Fight Day" (prior to the 142nd cadet class), especially to female cadets, have been removed from the Academy and replaced. The Learned Skills Unit now has a highly regarded (within APD) female sergeant and African American corporal in supervisory roles.
    - The Academy has eliminated SRT, a series of intense physical exercises that occurred on day one and pushed cadets to their physical and psychological limits to see how they acted under extreme stress. This frequently resulted in a number of cadets dropping out and appeared to operate as a sort of hazing ritual to force out cadets who "could not take it." Because Academy leadership determined that cadets were not being provided the tools to succeed and must be allowed to build physical capacity gradually, SRT was replaced with TBX – team building exercises.
        - According to the lesson plan, the goal of TBX is "to create a physically and mentally stressful environment through exercise and problem solving," which "will serve as an important introduction to the importance of teamwork and the need for strong

[6] In interviews with civilians who had accompanied APD officers on ride-alongs, it was noted that one officer commented that, if a physical conflict were to occur, he was going to "win" the encounter. Statements such as these give the impression of a "warrior" mindset among APD patrol officers.

leadership in law enforcement" consistent with the "philosophy, values, vision, and mission of the Austin Police Department."

- The Academy has also eliminated a steep hill climb that was used for SRT and disciplinary purposes and which caused a lot of ankle injuries. This has been replaced by TBX and modified discipline that requires cadets to carry a 15 or 20-pound sandbag to classes for a day if they fail an exercise, as well as collective discipline (behavioral modification exercises) in which all cadets perform extra physical fitness drills when any one cadet fails (this occurs in the first trimester of the Academy as a way of demonstrating that, when one officer messes up, it affects all officers).[7]

- The report of the Community Video Review Panel (CVRP), released on January 18, 2021, also highlighted concerns regarding the Academy's paramilitary culture as reflected in many of the Academy's training videos. A few of these concerns are highlighted in the below excerpts:

> *The us-versus-them bias was explicit in some of the videos --i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:*
>
> - *An enhanced focus on officer safety over the safety of the community as a whole,*
> - *A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"*
> - *An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and*
> - *Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.*
>
> . . . .
>
> *We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.*[8]

[7] These collective discipline sessions are sometimes referred to as "smoke sessions."

[8] "Community Report: Austin City Council Resolution 66: Austin Police Department Training Video Review Panel" (January 18, 2021).

Curriculum Review / Incorporating Adult Learning Theories

- Dr. Miguel Ferguson's preliminary curriculum review report of June 2020 urged the Academy to develop and design curriculum that adopts more of an adult learning or active learning model of teaching and move away from the rigid, formalistic, lecture-and-listen format that dominates many Academy classroom courses.[9]
    - Dr. Ferguson is awaiting guidance from Dr. Sara Villanueva or her replacement as ODTM before completing the final report, which he says will contain a comprehensive set of resources for instructors.
    - APD and Academy leadership have had little, if any, follow-up with Dr. Ferguson (with the exception of his co-leading a teaching symposium in December) concerning how to better incorporate adult learning theories and creative teaching methods into course content for the upcoming 144th cadet class.
- The report completed by Dr. Villanueva in May 2020 affirmed the need for the Academy to better develop and incorporate adult learning theories into its curriculum and teaching methods.
- The Academy is in the process of revising Cadet Training Instructor job descriptions (as recommended by Dr. Villanueva) to include appropriate expectations, duties, and responsibilities around teaching effectiveness.
- Although Academy instructors are actively in the process of revising course content and lesson plans in preparation for the 144th cadet class, Kroll has been informed that the focus is on ensuring that all course content is compliant with state-mandated TCOLE and BPOC requirements.
    - The sergeant and lieutenant in charge of Cadet Training are actively reviewing all course content for DEI-related courses; however, their reviews are likewise limited to ensuring that TCOLE and BPOC mandates are met, and do not pertain to whether lesson plans and curriculum content incorporate adult learning and other effective teaching strategies.
- The schedule for the 144th cadet class includes large blocks of time devoted to such courses as Penal Code (40 hours in Week 3), Arrest Search and Seizure (40 hours in Week 5), and Traffic Code/Crash Investigation (40 hours in Week 7), which requires instructors (often the same instructor) to teach non-stop for much of that time, and requires cadets to absorb a huge amount of information in a condensed period of time.
- When asked if the Academy is proactively revising the existing curriculum and lesson plans to incorporate more adult learning (active learning) strategies recommended by Dr. Villanueva and Dr. Ferguson, the answer provided is that Academy instructors and supervisors are awaiting further guidance and input from the new ODTM, whenever that person is hired to replace Dr. Villanueva.
- Nevertheless, a majority of Academy instructors and supervisors attended two teaching seminars within the past few months that addressed how to more effectively present course content and teach in ways that enhance learning. In particular, Academy instructors and supervisors recently attended:

[9] Dr. Ferguson's report specifically focused on course content for the following courses: Cultural Diversity, History of Policing, Professionalism and Ethics, Fair and Impartial Policing, Services for the Deaf and Hearing Impaired, Multiculturalism and Human Relations, Spanish, Transgender, LGBTQ, and Racial Profiling.

- A teaching symposium in December (co-led by Drs. Ferguson, Villanueva, and Sloan) that provided additional guidance on adult learning methods as applied to courses related to diversity, equity, and inclusion;[10] and
- A Transformational Training seminar led by a team of instructors at Command Presence (https://commandpresence.net/), a police instructional training firm. The 8-hour seminar provided ideas and methods for evidence-based teaching methods designed to counteract "death by Power Point" and other uninspiring teaching techniques. This was well-received by Academy staff, and the Academy plans to require this training annually for all Instructors.
- Academy instructors with whom Kroll spoke noted that many Academy courses already include a lot of scenario-based and role play content that is effective at teaching cadets how to apply what they are learning.

- Although APD and Academy leadership have expressed a willingness to work with outside civilian content experts from local colleges and universities in appropriate courses (such as the History of Policing and Race in Austin), it is unclear how much work is being done at present to bring in outside content experts and other community voices. For the most part, Kroll has found APD reluctant to incorporate a lot of community/civilian input and distrustful of non-police personnel (including academic experts such as Dr. Villanueva and Dr. Ferguson).
- Academy leadership is currently in the process of selecting and purchasing an automated Learning Management System (LMS) to help facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. However, APD is yet to finalize selection and procurement of such a system and appears to be leaning towards funding a less robust system due to budget concerns.

Community Input and Participation

- The length of the planned 144th cadet class has been cut from 32 weeks to 28 weeks. In doing this, the Academy plans to (a) cut all intermediate courses, which will be taught over the first two years following graduation from the Academy, and (b) add 30 hours of Community Engagement programming that was not previously included. The 28-week training program will include all state-mandated TCOLE and BPOC requirements and some additional tactical training courses.
  - Although Kroll has not yet seen the precise details of the planned 30-hours of community engagement programming, the stated intent is to expand upon the level of participation and input from community leaders who will be invited to speak to the cadets. The Academy had previously devoted seven one-hour blocks of time to guest appearances from community leaders, which purportedly will be expanded to 30 hours.
  - Some of the organizations APD is currently seeking to engage with are noted below:
    - Life Anew Restorative Justice
    - Measure Austin
    - Citizen Led Austin Public Safety Partnership (CLASP)

[10] According to Dr. Ferguson, although many instructors expressed openness to further transitioning to an adult learning environment, the feedback from the symposium was disappointing (survey results were mixed with only nine surveys completed).

- Mobile Loaves & Fishes
- Mexican Consulate
- Refugee & immigrant Outreach
- President for the Texas Association of the Deaf
- Transgender and Gender Marker Project
- Austin Justice Coalition
- Reimaging Public Safety Task Force
- National Alliance on Mental illness (NAMI)
- The Settlement Home for Children
- Mothers Against Drunk Driving (MADD)
- The Jeremiah Project
- The African American Youth Generation

- Community Video Review Panel (CVRP): The recently completed Community Report of the Video Review Panel found that the vast majority of the approximately 110 training videos reviewed over a seven-month period were not only outdated and "disappointing in quality" but also contained "unprofessional or sensationalistic commentary" and perpetuated harmful stereotypes "against Black and Brown communities." The report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues.
- Although difficulties were encountered initially in attempts to establish trust and communication between the APD and community representatives, the end result demonstrated a healthy collaboration, with several Academy leaders and instructors actively participating in the review panel's work. As a result of that approximately seven-month effort, the Academy has accepted all the CVRP's recommendations concerning the video content and is actively making changes to its video library in response to the panel's recommendations.
    - The Academy is currently in the process of eliminating all videos that were found to be offensive or insensitive to community concerns and replacing them where possible with more up-to-date and non-offensive depictions of subjects interacting with more diverse officers.
    - In addition, Academy instructors are actively searching for appropriate replacement videos that more effectively depict the right way to do things, as opposed to videos demonstrating what not to do, as was the case with many of the videos reviewed by the panel.
- APD is currently in the process of establishing a formalized system to comprehensively review, with community input, all future video content that has not otherwise been reviewed by the CVRP.

Professionalism and Passion of Instructors

- Kroll has been uniformly impressed with the passion and commitment to teaching and the mission of policing exemplified by the Academy's current leaders and instructors. They appear genuinely open to ideas that will help make them better instructors and want cadets to succeed and develop into first-rate police officers.
- Kroll notes that changing the culture of an institution and long-term notions embedded into the way things have always been done is no easy task. While most instructors and supervisors state they

are open to working with content experts and incorporating active learning strategies, they are passively awaiting guidance and input from leadership, including the hiring of a new ODTM, to help advise them on changes to teaching methods and course content.

- Nevertheless, Academy staff appears open to incorporating outside civilian content experts as instructors in certain courses (e.g., History of Policing and some DEI-related courses), if done in coordination and partnership with APD personnel.
    - At present, however, except for History of Policing and Race in Austin (discussed below) there does not appear to be any intentional or clearly-articulated plans to incorporate outside content experts (e.g., criminal defense attorney to talk about search & seizure law from a defense perspective; homeless advocate to discuss issues faced by the homeless population; mental health expert to address relevant issues, etc.)
    - The Academy has agreed to schedule eight hours to the History of Policing, including four hours on the History of Policing and Race in Austin, a new course designed by two University of Texas law professors and recommended by OPO. We understand that APD is currently in the process of arranging for an outside content expert to co-teach this course to the 144th cadet class with an African American member of Academy staff.

Cadet Injuries

- According to Appendix I of the Community + Equity Assessment Series report, and as confirmed by Kroll through APD-provided data, cadet injuries over the past five years have fluctuated as follows:

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	1
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	1
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	2
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	1
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	3
Covid-19	--	--	--	--	--	56
TOTAL	**90**	**123**	**77**	**116**	**98**	**68**

- According to data provided by APD, from 2015 to 2020, at least 509 cadet injuries occurred at the Academy. The racial and ethnic breakdown shows that, of these 509 injuries, 348 (68.37%) were to white cadets, 85 (16.7%) to Hispanic cadets, 57 (11.2%) to Black cadets, and 19 (3.73%) to Asian cadets. As noted in the Equity Assessment report, "[w]hile the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the

percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%)."[11]

- Academy leadership noted that better reporting and documentation of cadet injuries may have contributed to the increased numbers of reported injuries in recent years.
- The Academy requires a healthy dose of physical fitness and defensive tactics in an effort to prepare cadets for any number of crisis situations they may confront at some point in their careers as police officers. As noted by Chief Manley, "we pepper spray our cadets because officers need to know what it is like. We have our cadets engage in boxing because we hire people who have never fought before, and we want them to be okay when this happens after they become officers."

Graduation Rates

- Graduation rates at the Academy over the last five years show similar racial and gender disparities:

Academy Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[12]

- APD's data illustrates that Black cadets are less likely than their peers to graduate from the Academy, and more likely to be injured, than any other race. Female cadets also have lower graduation rates than white and Hispanic male cadets. As a result, Black and female cadets graduating from the Academy are underrepresented when compared to the population of Austin as a whole.
    - In terms of statistical significance tests (Chi-square analyses) overall Black cadets are significantly ($p < .01$) less likely than Non-Black cadets to graduate over the entire period

[11] "Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications," page 9 (December 14, 2020).

[12] According to the Report of the Community + APD Equity Assessment Series, City of Austin Equity Office, December 14, 2020, page 8, APD has recruited one Asian woman who has successfully completed the Academy within the past five years.

examined here.[13] This pattern was only true for Black cadets and not any other racial/ethnic group.

- As noted elsewhere, however, there appears to be a shift in this long-term pattern. The race differences were not significant in the last two cadet classes (142M and 143). Thus, the overall race-graduation differences (particularly Black cadet failure patterns) were driven by pre-2020 patterns.
- Overall, female cadets are also significantly ($p < .01$) less likely than male cadets to graduate over the entire period of study. However, the gender differences were not significant in the last two cadet classes (142M and 143). Thus, the overall gender-graduation differences were driven by pre-2020 patterns.
- Limited statistical power inhibits our ability to determine whether Hispanic females and Black females fail to graduate at a divergent rate than all other groups. However, each factor alone (race and gender) were clear predictors of graduation in the pre-2020 trends.

- Kroll notes, however, that the positive changes in the diversity of Academy leadership and to some of the more physically and psychologically intense components of the Academy (i.e., elimination of SRT and modification of "Fight Day" to "Will to Win"), as well as a distinct philosophical shift among Academy leadership to actively encourage all cadets to succeed, suggests that the Academy is conscious of and working to eliminate these inequities.
- The unique relationship that develops between APD recruiters and cadets is currently underutilized. Recruiters typically get to know cadets well and develop a more personal relationship with them than do Academy instructors. In the past, APD recruiters would reach out to a cadet if he or she left the Academy to obtain feedback and discuss what happened. We are told that this practice has been discontinued.

Crisis Intervention Training

- The Academy has greatly improved its crisis intervention team (CIT) training in recent years. The 144th cadet class schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness (NAMI), helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families." Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety." (https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs).
- The CIT model is a police-led, collaborative response for behavioral health crises that involves training patrol officers to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis and to refer those individuals to appropriate services, as opposed to conducting an arrest, when possible. The goals of CIT programs are to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services

[13] The Chi-Square results were derived from the Pearson Chi-Square statistic. Chi-square analyses is based on the null/alternative hypothesis counterfactual framework that assesses whether there are differences across categorical measures (e.g., race and sex with graduation). The corresponding p-value follows the conventional framework of .01 (or 99% confidence). Thus, significant findings suggest the differences across categories (e.g., Black vs. non-Black with graduation) is beyond chance where $p < .01$.

for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges. These programs have most traditionally been used to address individuals experiencing mental health- or substance use-related crises.

- CIT training not only provides officers with more tools to do their jobs safely and effectively, but also improves their knowledge of mental illness and community resources.
- Several evaluations have found that CIT training improves officer knowledge surrounding behavioral health-related challenges, reduces stigma associated with behavioral health, and increases officer empathy and confidence in their ability to successfully intervene in a crisis incident.
- Researchers have found that CIT training successfully increases officer awareness of behavioral health services within their communities and their support for referring individuals in crisis to these services.
- Evaluations show that CIT training increases officer familiarity with de-escalation techniques and support for de-escalating crisis events.

De-escalation / Use of Force Training

- Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum.
- ICAT is an evidence-based best practice designed by the Police Executive Research Forum (PERF) to help police officers "safely and professionally resolve critical incidents involving subjects who may pose a danger to themselves or others but who are not armed with firearms." (https://www.policeforum.org/assets/icattrainingguide.pdf). In its original format, ICAT training is designed as a 16-hour training block.
- ICAT training instructs police officers in de-escalation tactics and critical thinking skills for the management of potentially volatile police-citizen encounters, encouraging the integration of crisis recognition and intervention, communication skills, and operational tactics in police responses. This training is designed for patrol officers responding to circumstances involving persons in crisis – that is, individuals that may be behaving erratically due to mental health concerns, substance use, situational stress, and/or intellectual/developmental disabilities.
- The ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries (Engel et al., 2020).
    - Although officers have fewer options when dealing with threats involving firearms, ICAT is a training guide designed to fill a critical gap in training police officers how to respond to volatile situations in which subjects are behaving erratically and often dangerously, while unarmed or armed with a weapon other than a firearm (e.g., knife, baseball bat, rock, etc.). As explained by PERF, the ICAT Training Guide "includes model lesson plans and support materials (including Power Point presentations, videos, and other resources) in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics. ICAT then integrates these skills and provides opportunities to practice them through video case studies and scenario-based training exercises."

- ICAT's course content includes Legal Concepts, Critical Decision-Making, Crisis Recognition, Communication, and Tactics. Students learn to demonstrate key verbal communications skills that are critical to defusing (de-escalating) tense situations and gaining voluntary compliance. Students also learn to explain concepts such as "tactical pause," distance plus cover equals time, tactical repositioning, and continual assessment, all of which are essential to de-escalating encounters with citizens in crisis.

Preliminary Recommendations

As noted above, the APD and Training Academy have implemented a number of steps to address issues raised by the City, the community, and independent consultants. The Academy has made significant strides in diversifying its leadership and instructors to better reflect the community APD serves, although it has more work to do at the instructor level. The group of leaders and instructors presently at the Academy are highly professional, passionate about what they do, and genuinely interested in making the Academy a best-in-class institution.

That said, APD has been reluctant to embrace some of the recommendations provided to date concerning course content and teaching methods, and an even stronger reluctance to change the paramilitary nature of the Academy in any fundamental way. The relationship between APD leadership and certain segments of the community remain tense and broken, with several community activists unwilling even to engage with the current Chief. As with many police departments across the country, the police professionals feel like they are under constant attack and not given credit for much of the good work and public service they do, while the many and varied community voices most engaged in criminal justice and police reform efforts feel disrespected and unheard.[14]

But there are moves in the right direction. First, creating the Organizational Development and Training Manager (ODTM) position, so that an educational expert can review curriculum and work with instructors to develop ways to incorporate creative adult learning strategies into the training, was a proactive, positive initiative that should pay long-term dividends. Moreover, providing the ODTM with the civilian equivalent rank of Commander, if backed by leadership, will help further transition the Academy into a true adult-learning educational institution. Second, the collaborative work between APD and the Community Video Review Panel (CVRP), while difficult and turbulent at times, ultimately produced an excellent example of police-community collaboration that can and should form the foundation of future relationship building between APD and the citizens it serves. Kroll knows of no other academy in the United States that has evaluated its training videos for instances of bias and inappropriate content in this manner. The lessons learned and hard work by the Austin community and police officials in this effort is an example and practice that every police academy in the nation should emulate. Third, the decision to expand the planned 144th cadet class to include approximately 30 hours of outside community input and participation in cadet training, and the addition of course content such as The History of Policing and Race in Austin – to be taught in part by a locally-based subject matter expert – are concrete steps that further demonstrate a commitment by APD to improve its community relationships and train cadets in a manner more attuned to the community policing, guardian model that the City and the community desire.

[14] Kroll notes that Chief Manley has expressed to Kroll a willingness to engage with the community despite resistance from some vocal community activists. Additionally, the Acknowledgement section of the Joyce James Consulting Report commended the willingness of the Chief and his command team, and other sworn and civilian staff, to engage in open and honest dialogue that her team facilitated about institutional and structural racism. This would appear to be a step in the right direction for APD to begin honestly addressing racism institutionally.

There are a number of additional and necessary measures that can be addressed in the short run, including teaching methods and incorporation of adult learning strategies, substantive course content, community engagement, input and participation, and increased use of civilian content experts. Other more fundamental issues, such as significant changes to Academy culture, philosophy, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run with existing leadership, fundamental change cannot realistically be expected to happen overnight.

For these reasons, we have divided our preliminary recommendations into short-term and long-term measures, as noted below.

Short-term Measures

To begin addressing the key concerns expressed by the community and the findings, analysis, and recommendations of the reports and assessments conducted to date, and based on our preliminary findings noted above, the following steps should be completed before the start of the 144th cadet class:

- The City of Austin should immediately hire a replacement for Dr. Sara Villanueva as the Academy's ODTM. This person needs to have a clearly articulated mandate to assist Academy instructors in implementing and incorporating adult/active learning models throughout the ten courses examined as part of Dr. Ferguson's curriculum review and as set forth in the Level 1 and 2 recommendations in his June 2020 report, as well as implementing the recommendations of Dr. Villanueva in her Review Analysis and Strategic Plan report of May 2020, pages 10-11.
    - To help facilitate the transition to a new ODTM, the City should arrange contractually for Dr. Villanueva to assist the new ODTM in getting fully acclimated and on-boarded (Dr. Villanueva has expressed a willingness to assist in this manner). Although the position is officially ranked as the civilian equivalent of Commander, there was significant friction between sworn Academy staff and the ODTM position this past year. Although we understand state law currently prevents sworn personnel from being directed by civilian personnel, and while legislative efforts should be made to change that law, in the short term APD leadership needs to make clear that the ODTM speaks on behalf of leadership.
- The City should also, as soon as practicable, hire and on-board a Training Specialist to work with the ODTM and Academy Commander in updating and standardizing curriculum and support materials to better reflect adult and active learning strategies and eventually help transition the Academy to a blended civilian and police-led training academy with outside civilian instructors and APD Academy instructors teaching cadets, individually or jointly as appropriate for the course content.
- APD should expedite the procurement process to begin implementation of an automated Learning Management System (LMS) that will facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a

best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class.

- The Academy should formalize an internal review panel responsible for reviewing each instructor's syllabi and curriculum and suggesting ways to improve each class in the Academy. The panel should include the ODTM and Training Specialist, along with selected Academy and field supervisors, instructors, officers, and community representation. The panel could start with reviewing and evaluating video presentations of the training that is intended to be presented to the next cadet class.
    - With the assistance of the ODTM and Training Specialist, and in coordination with the Commander and Academy supervisors, all course content, including courses taught by the Learned Skills Unit and Cadet Training Unit, need to be evaluated for ways to incorporate DEI content into all aspects of training. The current siloed approach, which essentially isolates DEI courses from police tactical training, should be modified to ensure consistency of messaging and a fundamental emphasis on the humanity and complexity of the citizens APD serves and protects. "Checking the box" once a course is completed needs to be resisted. Teaching about multiculturalism and the importance of community relations in week one will be undermined if we then train "warriors" to counter all threats in later weeks. All courses should be reinforced, formally and informally, throughout the cadet training program.
    - Cadets must be thoroughly and effectively trained on all proper defensive tactics, arrest and control techniques, crowd control, and so on. But the messaging throughout the Academy needs to consistently emphasize the ethical responsibilities of policing, teach a sensitivity to legitimate community fears that are based in history, and recognize the complexity and nuance of the human beings that cadets will interact with on a daily basis. Cadets must understand that more than 95% of day-to-day policing is more akin to social work than policing. The single most important skill that a police officer can develop is the ability to effectively interact with and relate to a diverse community of people in ways that are honest, authentic, and transparent. Implicit messages, whether from training videos or course content, suggesting that certain people or neighborhoods are more "dangerous" than others, must be resisted and countered.
- Establish a formal process to continue a community review of police training videos that were not reviewed previously by the recently concluded Community Video Review Panel. This should include a process to re-review training videos every two years or so. Once a process is formalized, ongoing consultation should occur between APD and the CVRP concerning any new training videos proposed for use in future training courses to ensure that full community input is embedded into Academy planning and implemented in training.
- "Will-to-Win" should be converted to a "Self-Defense" exercise near the end of Academy training, after cadets have been properly taught and tested on all appropriate defensive tactics, hand-to-hand encounters, and similar tactics.[15] This "Self-Defense" session should be video recorded to ensure that appropriate levels of force are being used by the assigned instructor according to Academy protocols. We understand and agree with the need to prepare cadets for aggressive and hostile encounters, but "Will-to-Win" sends a message that implicitly affirms the "us vs. them"

[15] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

mentality that must be eliminated. There is a difference between properly preparing cadets for certain types of encounters and giving them the tools to protect themselves, but another thing to message that the object in hostile encounters with a member of the public is to "win" – which implies that someone must "lose." Officers must be trained on how to properly protect themselves and others, but proper messaging is crucial to ensure that the training exercise does not overtake the fundamental purpose of policing.

  - Kroll recommends a defensive tactics program that has cadets learn the basic skills starting early on in the Academy, where cadets work with instructors and other cadets to learn proper defensive tactics before they are tested near the end of training, either with a controlled/supervised period of time in a ring or other scenario-based training. This will assist in team building and allow cadets to learn and build the skills to succeed.
  - APD spends hundreds of thousands of dollars to recruit and conduct background investigations of cadets. Accordingly, every effort should be made to have cadets succeed by giving them the tools to do so. Self-defense testing and challenges should occur after PT training when recruits are warmed up and stretched out to help reduce injuries.
  - Ensuring use of the phrases "defending oneself" and "self-defense" will also help address the "warrior vs. guardian" issue.

- The use of the sandpit and having cadets carry sandbags as punishment for "messing up" should also be modified or eliminated.[16] The shift from SRT to TBX is a positive development; team building exercises are important and necessary, as is physical fitness and conditioning. We understand that there is a certain level of physical and psychological stress associated with policing and with training. But the old-school manner of incessantly yelling and screaming at cadets, and other humiliation tactics, serve little purpose other than to instill a military-like, bootcamp atmosphere that is counterproductive to preparing officers to serve as guardians of the community.
- Physical fitness, team building, and applying stressful situations to cadets should be completely separated from any academic training. Having cadets do extra pushups, sit ups, and other exercises while properly attired in athletic gear during formalized physical training programs (when cadets have properly stretched and warmed up) will reduce injuries. Once PT is concluded, the cadets should be in an academic learning environment in classrooms free of physical and unnecessary psychological stress. The rigors of learning course work are stressful enough. Instead of carrying around sandbags for mistakes or shortcomings, for example, cadets could be required to write an administrative report about their failure and how they plan to address it. This will incentivize cadets to correct their mistakes while helping develop the skill most officers will be spending considerable time doing throughout their careers (writing reports), while also documenting a non-subjective review of the cadet's progress.
- As part of its community engagement programming, the Academy should proactively reach out to a wide variety of community leaders and activists who are willing to work productively with APD in presenting genuine community perspectives and concerns about policing. This sort of community participation can be a mutually beneficial exercise that begins to slowly break down barriers of communication and enhance the learning experiences of the cadets.

[16] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

- To its credit, the Academy has scheduled "The History of Policing and Race in Austin" into the 144th cadet class curriculum and has arranged for a locally based subject matter expert to co-teach the course with an African American APD sergeant. APD should ensure that the course covers the content outlined in the OPO-approved curriculum and is reinforced in other courses throughout the Academy.
    - Serious consideration should be given to coupling this training with community outreach and immersion strategies, such as having cadets spend time in a food pantry or homeless shelter, attend community meetings out in the neighborhoods, meet with local community leaders, and spend time visiting mental health and substance abuse programs.
- The Academy should thoroughly review all other DEI-related courses and determine which may benefit from an outside, more academically oriented civilian content expert or a community perspective. Most of the DEI courses can be taught more effectively pursuant to a co-facilitation model that includes input and perspectives of civilian instructors and/or community members in both the design and delivery of the training. These courses should be co-taught by APD instructors in cooperation with appropriate subject matter academic experts or community allies who can provide direct community examples, round out perspectives, and foster valuable community partnerships. It is important that the people presenting in these courses have credibility with both the community and law enforcement.
- Chief Manley should consider tapping into the resources of his existing officer base to temporarily assign some diverse officers of exceptional skills to assist with Academy instruction, particularly in courses where a diverse perspective would be beneficial and worthwhile (one of the recurring criticisms of the cadet surveys conducted by Dr. Ferguson was that the Academy often had non-diverse instructors teaching classes like multiculturalism and cultural diversity). For example, there is currently a diverse pool of officers in the Recruiting Unit who know and have existing relationships with cadets and who, with some additional training, could easily supplement training staff and enhance the diversity of instructors teaching these courses.
- The Academy should consider the feasibility of incorporating Beyond Diversity by Dr. Glenn Singleton or the Groundwater Analysis training workshop by Joyce James Consulting LLC into the Academy curriculum and/or as part of annual training for Academy instructors and supervisors (and eventually all officers).
- The Academy should reinstitute the practice of following-up with a cadet who leaves the Academy for any reason. The recruiter who had developed the relationship with the cadet might be able to identify an opportunity for the cadet to return to the Academy in a later class if circumstances allow. It also provides an opportunity for feedback to identify any changes needed in the training or recruiting process to ensure future success.
- The Academy should develop a mentorship program for all cadets, especially recruits of color, that will provide additional support for cadets and help them succeed at the Academy. These efforts would assist Commander Johnson with her stated desire to see Academy staff become more supportive and encouraging in helping all cadets succeed.
- The City should require an ongoing, independent review of the Academy by an outside monitor once the 144th cadet class begins to ensure implementation of the above recommendations and to help ensure that further adjustments and improvements are made moving forward.

- Kroll understands that many would like to see a completely revised training program that has addressed all issues before another class starts. We caution, however, that until instructors are actively training recruits, it will be difficult to fully assess whether the changes and recommendations currently being made or adopted are sufficient.

Long-Term Measures

To address some of the cultural and attitudinal concerns expressed by the community leaders we spoke with, and as set forth in the CVRP report, Equity Assessment report, and the other consultant reports addressing APD training, we recommend that, absent exceptional circumstances, the following measures be implemented prior to the start of the 145th cadet class:

- To build on the positive collaboration between the APD and the community in evaluating for bias and other inappropriate content in the APD's training videos, APD and the City should consider working with a professional media literacy educator to help develop effective teaching videos moving forward that will have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy and behavior. While it's one thing to analyze what one sees and hears, it's another thing to develop effective teaching videos as tools to undo engrained bias, worldviews and attitudes that we all are born into, and how we have come to "interpret" living realities. It will take real knowledge and skills to overturn what is so embedded in the recruits that come to the Academy. This will be true regardless of race, gender, or class status.
    - A renowned national leader in "media literacy" (e.g., Professor Renee Hobbs, founder of the Harrington School of Communications and Media at the University of Rhode Island or a similar expert from an Austin-area college or university) could help bring credibility to this process.
- APD and the Academy should consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers. A common problem in many police departments is that, once certain practices are taught in the Academy, the new officer learns a "different way" of doing things on the street. This undermines what is taught at the Academy and compromises an academy's efforts in staying up to date with best practices and any positive reform measures implemented at the cadet training level.
- APD should develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level, to increase the number of African American, Hispanic/Latinx, Asian, and female instructors assigned to the Academy.
- Academy class schedules should be revised to eliminate 40-hour blocks of course content to such things as Penal Code, Traffic Code, and Arrest Search and Seizure. These courses should be spread out over the length of the Academy, so that no more than two to four hours per day, three days a week are devoted to these important, but often dry and legally important subjects.[17] Cadets need the opportunity to study and absorb the material that is taught, with an opportunity to ask questions and be tested in a progressive, cumulative manner.

[17] We understand that this recommendation may require approval from the Texas Commission on Law Enforcement (TCOLE), and thus we have not included it as a short-term recommendation to be implemented prior to the 144th cadet class.

- The Academy should expand its physical fitness training to a daily regimen, to be scheduled first thing in the morning (and separated from all academic content – except for physical training associated with self-defense and other defensive tactics).[18]
- Based on Koll's initial review, we have learned that the physical fitness requirements at hire may not be predictive of the physical fitness requirements in the Academy, and the physical fitness requirements in the Academy may not positively correlate with the physical fitness requirements of police officers post-graduation. For example, we have been told that many female applicants pass the initial physical fitness test and many African American male applicants fail the initial physical fitness test, yet both of these groups seem to struggle with the physical fitness requirements at the Academy. We also understand that there are essentially no physical fitness requirements of police officers once they have graduated from the Academy. As such, further analysis and adjustments of these relationships are required to ensure that pre-Academy, Academy, and post-Academy physical fitness standards are consistent with successful job performance. These potential inconsistencies lend further credence to Kroll's suggestions about physical training requirements and sequencing at the Academy, although this will only partially address questions about the physical fitness required by APD.
- The Academy should develop a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to officially starting at the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.
- Although we understand that the ICAT training has been adopted department wide as required in-service training for all sworn personnel, APD should require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. Departments that have widely adopted and implemented ICAT in other parts of the country have seen a marked decrease in use-of-force incidents.
    - Up-to-date de-escalation training needs to be delivered department wide, reinforced through use-of-force policy, supported by field supervisors, and included as a component of use-of-force reviews. Without a holistic approach, training in the academy will be "undone" once cadets graduate and are in the field.
    - We also recognize the importance of the Community Video Review Panel recommendations to this training. Some of the videos used in the Academy's existing ICAT training were offensive to the community because it reinforced stereotypes involving Black women and communities of color overall. PERF emphasizes that ICAT training is flexible and adaptable, encouraging that agencies be creative in how they incorporate the training modules into new or existing programs on de-escalation, tactical communication, or crisis intervention. Many agencies use different videos and scenarios that better fit within their organizational and community context. These videos could easily be changed without losing any training content.
    - The ICAT training provides comprehensive instruction on critical thinking, crisis recognition, tactical communications, continual assessment, and scenario-based training.

[18] Kroll understands that the current training facility supports all three of the City's public safety departments and does not currently have the capacity to implement this recommendation without the creation of more lockers and shower space. Accordingly, we have placed this as a long-term (as opposed to short-term) recommendation.

As the Academy is in the process of implementing the CVRP's recommendations regarding use-of-force videos, once there is a consensus among the CVRP that the videos used are gender and racially appropriate, it will enhance the existing ICAT curriculum and provide an appropriate equity lens to APD officers during de-escalation training.

- To promote instructor wellness and avoid burnout, low morale, and reduced job performance, there needs to be some recovery time built into the intervening period between cadet classes. We recognize police departments always strive to reach their complement of new sworn officers, but it is important to be mindful that instructors have little down time from teaching between the end of one cadet class and the beginning of another (see Dr. Villanueva report, page 9).
- Although achieving perfection is not possible, as the Academy and APD are human institutions, building a long-term system of internal and external review of training methods and Academy effectiveness is essential to institutionalizing the search for excellence. Training police officers to become community-oriented, empathetic, and compassionate guardians of the public in a dynamic and diverse city, while promoting officer health and wellness, is a constantly evolving process. For this reason, police academies should be in a constant state of review and improvement.

COMPLAINT
EXHIBIT E

KROLL

Austin Police Department: Review and Assessment of Training Academy

April 23, 2021

Prepared for
City of Austin, Office of Police Oversight / City Manager's Office

Status
Final Report

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Contents

1 INTRODUCTION 1

2 EXECUTIVE SUMMARY 3

3 BACKGROUND AND CONTEXT 7

4 BEST PRACTICES FOR POLICE ACADEMIES 11

5 APD TRAINING ACADEMY – FINDINGS AND ANALYSIS 31

5.1 Academy Diversity 32

5.2 Academy Culture 38

5.3 Teaching Methods / Adult Learning 51

5.4 Cultural Competency Training / DEI Content 55

5.5 Community Input and Participation 66

5.6 Professionalism of Instructors 70

5.7 Cadet Injuries / Graduation Rates 70

5.8 Crisis Intervention Team Training 77

5.9 Additional De-escalation / Use of Force Training 80

5.10 Non-English-Speaking Residents and Persons with Disabilities 81

5.11 Field Training Officer Program 81

6 COMMUNITY FEEDBACK 84

7 APD TRAINING ACADEMY – RECOMMENDATIONS 92

7.1 Short-term Measures 93

7.2 Long-Term Measures 97

8 APD IMPLEMENTATION / ACTION PLAN 101

9 CONCLUSION 108

10 APPENDIX 109

10.1 Kroll Project Team 109

1 INTRODUCTION

On November 12, 2020, the City of Austin's Office of Police Oversight (OPO), in consultation with the City Manager's Office (CMO), retained Kroll Associates, Inc. (Kroll) to review and evaluate the Austin Police Department (APD) on the extent to which forms of racism, bigotry, and discrimination are present in the protocols, practices, and behaviors of the APD. The initial phase of Kroll's review is limited to an assessment of the APD Training Academy (Academy) – specifically, the Academy's ability and readiness to prepare cadets for policing in a multi-ethnic, diverse urban population consistent with best practices.[1]

The City of Austin (City), as expressed through City Council Resolution 66 and the work of the Reimagining Public Safety Task Force, and as articulated in the 2020 Strategic Plan of the APD Training Academy, seeks a transformational police academy that transparently addresses issues of racial and gender equity, emphasizes de-escalation tactics that minimize the use of force, and moves away from a regimented, paramilitary culture into a learning academy that "promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships."[2]

In performing this review, Kroll reviewed and considered the reports and assessments noted below that examined many of the issues addressed in this report, including the training academy's culture, teaching methods, approaches to racial and gender equity, and course/curriculum content:

1. APD Training Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020)
2. APD Training Academy Curriculum Review by Dr. Miguel Ferguson
    a. Preliminary Report (June 19, 2020)
    b. Final Report (April 5, 2021)
3. Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications (December 14, 2020)
4. Racial Inequities and Institutional Racism, Joyce James Consulting (November 2020)
5. Community Report: Video Review Panel (January 18, 2021)
6. Community Video Review Panel (CVRP): APD Training Academy Videos, Final Report (January 14, 2021), and CVRP Summary Reports from July 2020 to November 16, 2020.

In addition, we conducted over 60 interviews and meetings with a broad array of stakeholders (more than 100 individuals), including, but not limited to, the following:

- Dr. Sara Villanueva ("APD Training Academy Review Analysis and Strategic Plan");
- Dr. Miguel Ferguson ("APD Training Academy Curriculum Review");
- City of Austin Equity Office staff ("Community + APD Equity Assessment Series");
- Community Video Review Panel ("Community Video Review Panel Report");
- Joyce James Consulting staff ("Racial Inequities and Institutional Racism");
- Austin community leaders (Just Liberty, NAACP, Austin Area Urban League, Austin Justice Coalition, Texas Appleseed, MEASURE);
- Greater Austin Crime Commission;
- Community Police Review Commission;

[1] Kroll's retention is pursuant to contract MA 4400 PA210000018.

[2] Sara Villanueva, "Review Analysis and Strategic Plan" (Austin Police Department Training Academy, May 2020), 13.

- APD leadership (Chief Brian Manley, Interim Chief Joseph Chacon, and Chief of Staff Troy Gay);
- Academy leadership (Assistant Chief Brent Dupre, Assistant Chief James Mason, Commander Mark Spangler, Commander Catherine Johnson, and Division Manager Dr. Anne Kringen);
- Academy supervisors – Training and Recruiting Units;
- Academy instructors;
- Representatives of the Austin Police Association and affinity associations:
    - Austin Police Women's Association
    - Lesbian and Gay Peace Officers Association
    - Texas Peace Officers Association
    - Amigos en Azul Police Association
- Texas Commission on Law Enforcement (TCOLE) leadership;
- Former APD Training Academy cadets and newly sworn officers;
- Austin City Council;
- City of Austin officials and staff;
- Austin Equity Office;
- Austin community representatives – presentation / community forum.

Kroll also reviewed a large volume of documents from the APD and the City, including Academy curricula, course content and lesson plans, instructor CVs, organizational charts, policy manuals, procedures and protocols, APD General Orders, statistical data, cadet manuals, class schedules, recruitment materials, employee rosters, and other documentation and data. Finally, Kroll conducted extensive research on best practices in police training academies around the United States.

This report details our findings and recommendations concerning the APD Training Academy. Section 2 contains an Executive Summary of the report. Section 3 explains the background and context that led to this review. Section 4 provides examples of evidence-based best practices in police training techniques that have been proven effective in changing police culture, reducing use of force incidents, enhancing police responses to mental health crises, and improving police-community relations. Section 5 outlines our detailed findings and observations concerning key areas of focus. Section 6 summarizes the community input and feedback Kroll received throughout our review process. Section 7 provides a series of recommendations to improve APD's ability to prepare cadets for policing in a diverse urban environment in a manner that fosters police-community relations, enhances public safety, and minimizes incidents of conflict and force. The recommendations include short-term measures to be implemented before the 144th cadet class and long-term measures to be implemented before the 145th cadet class. Section 8 outlines APD's up-to-date efforts to implement the recommendations. Finally, Section 9 provides Kroll's brief concluding remarks.

Kroll wishes to thank the City of Austin, the many community representatives with whom we spoke, and the Austin Police Department for their cooperation and assistance in this review. While everyone may not agree with each of Kroll's findings and recommendations, Kroll has attempted to describe the issues fairly and, where applicable, identify the need for reforms. It has been a pleasure for Kroll to speak with so many talented people and professionals among City staff, the APD, and the community. The commitment, dedication, and good faith of everyone with whom we interacted were readily apparent.

2 EXECUTIVE SUMMARY

In this report, Kroll recommends a shift away from a stress-oriented military-style academy toward a resiliency-based approach supported by adult learning and student-centered instruction. We believe that, consistent with national best practices, it is essential that the APD Training Academy adopt a guardian-centric approach that emphasizes service to the community, while at the same time preparing officers to effectively react and respond to crisis situations when they occur. We encourage APD to become an evidence-based learning organization, where changes in Academy training are rigorously tested and research findings are routinely shared with Academy staff to inform continual improvements in the curricula offered.

In assessing the APD Training Academy, Kroll focused on many key areas, including those highlighted below. Although the primary emphasis of our review has been on the readiness of the planned 144th cadet class in light of the City's stated objectives, we also examined the long-term potential for developing a transformational, best-in-class police academy. Below is a brief summary of our key findings and observations:

- **Academy Diversity**. Academy leadership and supervisory staff currently reflects a significantly improved level of gender, racial, and ethnic diversity than in years past. While Academy instructors in the Training Unit are less diverse than the supervisory staff, the department is moving in the right direction. The Recruiting Unit also contains a diverse team that has developed an effective outreach program, which targets historically black colleges and universities, Latinx organizations, women, and military veterans. Moreover, the list of cadet candidates who are currently expected to attend the 144th cadet class consists of one of the most diverse classes in recent APD history.
- **LGBTQ+ Training**. While cadets who have graduated from the Academy within the past several years have received excellent training on transgender and LGBTQ issues, this training has not been pushed out to the department as a whole. Consequently, officers who graduated from the Academy more than seven years ago—including the "Fifth Floor" leadership at APD—have not received any department-sanctioned training on understanding the unique issues associated with the LGBTQ+ community. The Academy also needs to improve awareness of LGBTQ issues to the tactical trainers in the Learned Skills Unit.
- **Anti-racism Training**. APD and Academy leadership recently participated in two excellent anti-racism workshops, and the Academy is incorporating Groundwater Analysis Racial Equity training into the curriculum of the 144th cadet class, as well as future Academy classes.
- **Academy Culture**. The culture of a police training academy reflects the culture of a department and impacts the mindset and approach to policing that newly sworn officers adopt upon graduation. Culture is perhaps the most difficult thing to change in any organization. How cadets are treated, how they are expected to act, and what explicit and implicit messages are communicated to cadets all impact the type of officer a training academy develops prior to sending newly sworn officers out into the community. In conducting this review, Kroll noted a divergent set of views regarding current Academy culture. On the one hand, some former cadets who were forced to resign from the 137th and 140th cadet classes described an Academy culture that was "toxic", "abusive" and "combative" and teaching methods that embraced "intimidation tactics." Instructors relentlessly ridiculed and mocked certain cadets during physical training, with an apparent bias against female cadets, which was primarily driven by the perception that particular cadets could not meet the required physical

fitness expectations needed to become an APD officer. On the other hand, many APD officers we interviewed believe that the manner in which the Academy prepares cadets is necessary and that the allegedly abusive practices noted above are not reflective of the true Academy culture. Most APD officers contend nevertheless that stressful tactics are essential to preparing cadets for what can be a dangerous and pressure-filled job. These officers contend that, without an element of physical and psychological stress applied during training, cadets will be unprepared for the many stressful encounters they will inevitably confront, at the risk of public safety and officer safety.

- **Paramilitary Training Model**. The Academy at present remains a predominantly paramilitary training model. APD leadership believes that some aspects of a paramilitary structure are essential to ensure cadets are attuned to the chain of command and clear lines of authority, and to prepare cadets to effectively respond in crisis situations. While Kroll agrees that training officers to deal with real world threats, which can include exercises that elevate a cadet's heart rate and induce the physical effects of being placed in fear and under stress, is necessary, this cannot be at the expense of training cadets to be community-oriented guardians at their core.
- **Best Practices – Resiliency-based Training**. As noted in Section 4 of this report, police academies can establish a guardian-centric culture that focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, "resiliency-based" training has been shown to have many positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression. By strengthening cadets' critical decision-making skills, communication, and emotional intelligence skills, cadets will be better prepared to handle the complex situations they are likely to face in the field. We believe this can occur without a strictly regimented, paramilitary foundation.
- **Adult Learning**. The Academy needs to further develop and incorporate adult learning theories into its curriculum and shift away from the rigid, formalistic, lecture-and-listen format that has previously dominated many training courses. Although the Academy currently incorporates much scenario-based teaching into its training, many of its classroom-based courses can be improved. To address this, on March 15, 2021, the Academy hired Dr. Anne Kringen as a Division Manager to fill the role held by the prior Organizational Development and Training Manager. With the backing of Interim Chief Joseph Chacon, Academy staff have been instructed that Dr. Kringen is equivalent in rank to a Commander. One of Dr. Kringen's immediate priorities is to work with instructors to ensure that (1) all lesson plans are updated, (2) content is current and corresponds appropriately to the objectives of the course, and (3) adult learning and innovative teaching techniques are incorporated into course content. On April 1, 2021, Dr. Kringen provided Kroll with an outline of her plan to update all course content. She will also be exploring Academy culture and helping to find the proper balance between academic-style learning, physical and tactical training, disciplinary measures, and chain-of-command structures.
- **Use of Outside Content Experts**. APD has historically been reluctant to incorporate outside community and civilian input into its training programs. However, more recently Academy leadership has expressed a willingness to work with community representatives and outside content experts from local colleges and universities to co-teach or guest speak in appropriate courses. The new Division Manager is currently reviewing course content and meeting with instructors to determine which courses—particularly diversity, equity, and inclusion (DEI) related courses—can effectively be co-taught with an outside subject-matter expert. This will also be an area of responsibility for the newly created Academy Curriculum Review Committee, which will include two outside academic experts and four community representatives.

- **Curriculum Review**. Kroll reviewed the DEI curriculum review report of Dr. Miguel Ferguson and examined the lesson plans, curricula, and teaching materials provided by Academy staff for courses that address cultural competency training, including the History of Police and Race in America, Cultural Diversity, Professionalism and Ethics, Fair and Impartial Policing, Multiculturalism and Human Relations, Interacting with Transgender Individuals, Law Enforcement and the LBGTQ+ Community, Racial Profiling, Spanish, Interacting with Individuals who are Deaf, and Traumatic and Acquired Brain Injuries. Overall, these courses collectively provide content that is crucial to enhancing the cultural competency of newly sworn officers. Kroll and Dr. Ferguson identified gaps in and provided recommendations for some of the course materials.
- **Community Engagement / Lived Experiences Programming**. The Academy plans to include 37 hours of Community Engagement programming, including approximately 30 additional hours that were not previously included. Although the precise details are currently being developed, it will greatly expand participation and input from the community. The Division Manager is currently working with Academy staff to proactively identify and contact community partners that will provide an invaluable perspective to cadet training. This additional emphasis on community engagement, combined with added course content such as "The History of Police and Race in America" are positive additions to Academy instruction that place a necessary focus on the importance of meaningful police-community interactions and mutual understanding.
- **Community Video Review Panel**. We highlight the recent work of the Community Video Review Panel (Panel), which over seven months found that many of the Academy's training videos contained "unprofessional or sensationalistic commentary" and perpetuated harmful stereotypes "against Black and Brown communities." The Panel report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues. The Panel's recommendations addressed several systemic, community impact, and instructional concerns. Although difficulties were encountered initially in attempts to establish trust and communication between APD and community representatives, ultimately it was a healthy collaboration, with several Academy leaders and instructors actively participating in the Panel's work. APD ultimately accepted the Panel's recommendations and is actively modifying its video library in response. Moreover, APD is currently establishing formal protocols for a continuation of the Panel's work.
- **Instructor Professionalism**. Kroll has been uniformly impressed with the passion and commitment to teaching exemplified by the Academy's current leaders and instructors, who appear genuinely open to ideas that will make them better instructors and help cadets develop into first-rate officers.
- **Cadet Injuries and Graduation Rates**. Based on an examination of the last six years of data, we found that, although nearly 73% of cadets entering the Academy successfully graduate, the likelihood of graduation varies significantly across cadets by race and sex. Specifically, Black and female cadets are statistically less likely to graduate compared to cadets of other races and male cadets, respectively. Overall, the likelihood of graduation is not significantly impacted by injuries within the Academy. However, two groups of cadets significantly differ in their likelihood of graduation and timing of injuries. Specifically, cadets who were female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprised roughly 23% of the classes, were significantly less likely to complete the Academy training, compared to non-Black

males (White males, Hispanic males, and Asian males), which comprised roughly 77% of the classes.

- **Crisis Intervention Team (CIT) Training**. Consistent with best practices, the 144th Academy schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families." Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety."
- **De-escalation Training**. Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum. This also is consistent with best practices, as ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries. Combined with other de-escalation training at the Academy, including verbal de-escalation and aspects of CIT training, the Academy devotes approximately 31 hours overall to de-escalation training. This is slightly above the national average.
- **Field Training Officer Program**. Overall, APD's FTO Program is well structured and documented. However, to further strengthen the program and ensure that what officers learn on the street after graduating is consistent with what they learn in the Academy, and to address other concerns raised by the City and the community concerning the FTO Program, we have included additional long-term recommendations.

Recommendations. Section 7 of the report provides recommendations to improve APD's ability to prepare cadets for policing in a diverse urban environment in a manner that fosters police-community relations, enhances public safety, and minimizes incidents of conflict and force. The short-term measures address adult learning strategies, course content, community engagement, and increased use of content experts, among other things. More foundational measures, such as changing Academy culture, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run, fundamental change cannot realistically be expected to happen overnight. Accordingly, our recommendations include short-term measures to be implemented prior to the start of the 144th cadet class and long-term measures that should be achievable by the 145th cadet class.

Finally, Section 8 outlines APD's up-to-date efforts to implement the recommendations. The planned 144th Academy now encompasses 34 weeks and includes (1) 30 additional hours of community engagement programming, (2) a two-week community immersion orientation program, (3) anti-racism training, (4) a newly designed course on the history of police and race to be co-taught with a local subject-matter expert, (5) near daily physical fitness training, (6) fewer week-long blocks of technical course content that will allow for more effective implementation of adult learning strategies, and (7) a formalized process of community and civilian input into training content to ensure that issues of racial equity and procedural justice are paramount considerations in all aspects of cadet training.

Several of Kroll's recommendations have already been completed or are in the process of being implemented (subject to verification), with a plan in place to complete implementation before the start of the 144th cadet class. Other recommendations are in progress and will need to be evaluated once the new Academy classes begin.

3 BACKGROUND AND CONTEXT

Kroll's assessment of the APD Training Academy arose as part of the City of Austin's efforts to reimagine policing following a series of recent national and local events that shined a spotlight on police-community relations throughout the United States. As with many other U.S. cities that are consciously re-examining policing following the tragic killing of George Floyd and resulting protests this past summer, a series of alleged incidents and reports concerning the Austin Police Department over the past couple of years prompted the City, through Council resolutions and other calls for action, to more closely examine all aspects of policing, starting with how APD trains its officers. This section highlights some of the recent events, statistics, and reports that have provided the background and context for Kroll's review.

Reports of Racial Profiling and Bias. As outlined in City Council Resolution No. 20191205-066 ("Resolution 66"), adopted December 5, 2019, several internal and external reports have highlighted alleged racial disparities across various facets of APD's law enforcement operations that have disproportionately impacted communities of color. For example, according to state-mandated racial profiling reports from 2010 to 2018,[3] APD officers were more than twice as likely to search Black and Latino drivers than white drivers during traffic stops despite no greater likelihood of discovering contraband.

The Center for Policing Equity reported in 2016 that Black and Hispanic motorists made up a significantly higher share of discretionary stops than white motorists.[4] According to APD discretionary arrest data from 2017, APD officers made discretionary arrests of Black citizens at more than twice the rate of white or Latino residents; Blacks and Latinos were disproportionately arrested for driving with an invalid license compared to other races and ethnic groups, and Black residents were more than seven times as likely to be arrested for low-level marijuana offenses than white residents.[5] Moreover, in 2019, the department reportedly received eight formal complaints and 40 informal complaints of racial profiling, more than three times as many as in 2018.[6]

Alleged Racial Insensitivity by APD Officers. On October 30, 2019, the City received an anonymous complaint against former APD Assistant Chief Justin Newsom which alleged that, on several occasions over the past decade, Newsom used explicitly racist language in reference to President Barack Obama, former City Council Member Ora Houston, and former APD Assistant Chief Frank Dixon, among other persons of color. This complaint also alleged that then APD Chief Brian Manley and other high-level police officials knew of Newsom's use of racially derogatory language but did not act on the information.[7] While an independent investigation into these claims could not corroborate the specific alleged incidents ascribed to Newsom, it reported that "racist and sexist name-calling and use of derogatory terms associated with race and sex persists" within the department and "there is a very high level of fear of retaliation" for speaking

[3] https://www.austintexas.gov/page/racial-profiling-reports

[4] Phillip A. Goff et al., "The Science of Policing Equity: Measuring Fairness in the Austin Police Department" (New York, NY: Center for Policing Equity; Washington, D.C.: Urban Institute, 2016), https://policingequity.org/images/pdfs-doc/Austin_PDI_Report_2016_Release.pdf.

[5] https://www.austintexas.gov/edims/document.cfm?id=300349

[6] Bryce Newberry, "APD Racial Profiling Complaints More than Tripled from 2018 to 2019, Report Says," *KVUE*, February 28, 2020, https://www.kvue.com/article/news/local/apd-racial-profiling-complaints-more-than-tripled-from-2018-to-2019-report-says/269-eb531b4f-1970-4032-bdb3-2989772a798f.

[7] Russell Falcon, "Anonymous Complaint to City of Austin Alleges Former APD Assistant Chief Used 'n Word' to Refer to African-Americans," *KXAN Austin*, November 7, 2019, https://www.kxan.com/news/local/austin/austin-city-manager-approves-outside-investigation-into-complaints-against-former-apd-assistant-chief-department/.

out against officers, as well as "quiet resistance from those interviewed in the form of evasiveness, misdirection and deflection."[8]

Moreover, in November 2019, a complaint received by the Office of Police Oversight alleged that a female Assistant Chief made disparaging remarks towards other officers, including one statement in which, referring to a Hispanic detective, the Assistant Chief allegedly said, "Maybe now more of your people [Hispanics] can get a job since college is no longer a requirement."[9] The complaint also alleged that officers rarely challenge their superiors on their misconduct "for fear of retaliation."[10]

Demographic Analysis. An *Austin American-Statesman* review of APD demographic data in 2016 found that, on average since 2005, approximately 69% of APD officers have been white, 20% Hispanic, 9% Black and 2% Asian/Pacific Islander.[11] This compared to 2015 U.S. census data, which showed that Austin's population at that time was approximately 48% white, 35% Hispanic, 7% Black, 7% Asian/Pacific Islander, and 3% other races and ethnicities.

According to the APD demographic data as of December 2020, the diversity among sworn personnel has not materially changed. Among all ranks, APD officers are 66.7% white, 21.8% Hispanic, 7.3% Black, and 3.0% Asian/Pacific Islander (compared to 2019 census data, which reflects that Austin's population is 48.3% white, 33.9% Hispanic, 7.8% Black, 7.7% Asian/Pacific Islander, and 3.5% multi-racial).[12] Moreover, as noted in the below chart, the higher ranks of the Department are far less diverse, as white officers constitute 70% of sergeants, 79.7% of lieutenants and 84.2% of commanders, while other racial and ethnic groups make up significantly lower percentages of the higher ranks.

		Ranks by Ethnicity [1]							Ranks by Gender [1]	
	# Personnel by Rank	White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Assistant Police Chief	6	50.0%	33.3%	16.7%	-	-	-	-	66.7%	33.3%
Police Commander	19	84.2%	5.3%	-	5.3%	5.3%	-	-	94.7%	5.3%
Police Lieutenant	69	79.7%	11.6%	5.8%	1.4%	-	1.4%	-	88.4%	11.6%
Police Sergeant	172	70.3%	15.1%	9.3%	1.7%	1.7%	1.7%	-	88.4%	11.6%
Police Corporal/Detective	401	68.1%	20.7%	8.0%	1.5%	0.7%	1.0%	-	87.8%	12.2%
Police Officer	1,104	64.6%	24.1%	7.3%	3.0%	0.5%	0.4%	0.1%	89.8%	10.2%
All Ranks	1,771	66.7%	21.8%	7.6%	2.5%	0.7%	0.7%	0.1%	89.1%	10.9%

NOTE: [1] Only Sworn Officers who appear to be currently allocated are included in this analysis.

Protocols and Training. The department has also been criticized in recent years for not properly emphasizing de-escalation in training protocols, leading to avoidable incidents involving excessive use of force. A 2016 "Use of Force Project" report revealed that, at least as of 2016, the APD did not require de-

[8] Lisa Tatum, "Austin Police Department Independent Investigation: Fact Investigation" (The Tatum Law Practice, April 2020), http://www.austintexas.gov/edims/pio/document.cfm?id=338889.

[9] https://joplin3-austin-gov-static.s3.amazonaws.com/production/media/documents/2019-1308_NFC_Stephenson.pdf

[10] *Ibid*.

[11] Katie Hall, "For Last Decade, Police Had More Whites, Fewer Hispanics than City Has," *Austin American-Statesman*, December 24, 2016, https://www.statesman.com/news/20161224/for-last-decade-police-had-more-whites-fewer-hispanics-than-city-has.

[12] https://www.census.gov/quickfacts/fact/table/austincitytexas/LND110210

escalation strategies, ban chokeholds or strangleholds, restrict shooting at moving vehicles, require exhausting all means before shooting, or require comprehensive reporting on use of force.[13] In an effort to combat this issue, a task force commissioned by the mayor released a report in 2017 recommending that the Academy include and specifically emphasize de-escalation training. As a result, in 2018, APD guidelines began placing greater emphasis on the use of de-escalation strategies.[14]

Past criticism has also been directed at the APD Training Academy, including complaints that the Academy promotes a toxic culture among recruits. For example, in 2018, a group of former cadets alleged that the Academy encouraged a culture of abuse towards citizens.[15] One former cadet alleged that instructors told cadets that they would "punch them in the face" if they said that the reason they wanted to be police officers was to help people. Another former cadet alleged that their "instructor repeatedly degraded the homeless and prostitutes, referring to them as 'cockroaches' and suggesting they 'find a transient' if [cadets] were bored and wanted a felony arrest." Several cadets also alleged they were injured during training as a result of abusive practices.

Allegations of Excessive Uses of Force. The Center for Policing Equity's 2016 report also found that APD was more likely to use force in African American and Latino communities, including severe force. These racial disparities persisted even after controlling for such factors as crime, education, homeownership, income, youth, unemployment, and poverty rates.

There have been many additional allegations of excessive uses of force against APD officers in recent years. For instance, two officers were charged criminally and terminated in 2018 for allegedly using a Taser weapon on an unarmed man who was in a kneeling position. Body camera footage captured the incident, but the officers were later found not guilty.[16] In addition, on April 24, 2020, Michael Ramos died after being shot by an APD officer as Ramos attempted to leave the scene of an encounter.[17] The officer has since been indicted on murder charges.[18] Finally, following the death of George Floyd in Minneapolis and the ensuing protests across the country that followed, APD was involved in three incidents in which non-violent protesters were struck by less-lethal police fire: a man in his 20s who was in critical condition, a teenage boy who was hit in the forehead, and a pregnant woman who was hit in the abdomen.[19]

Finally, a report released in September 2019 by the Human Rights Clinic of the University of Texas School of Law alleged that "Austin police are violating international human rights standards during mental health

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[13] Samuel Sinyangwe, "Examining the Role of Use of Force Policies in Ending Police Violence" (Police Use of Force Project, September, 2016), https://dx.doi.org/10.2139/ssrn.2841872.

[14] Andrea Ball and Tony Plohetski, "New Austin Police Policy Emphasizes Alternatives to Using Force," *Austin American-Statesman*, January 21, 2018, https://www.statesman.com/NEWS/20180121/New-Austin-police-policy-emphasizes-alternatives-to-using-force.

[15] Tony Plohetski, "Are Austin Police's Cadets Trained to Be 'Warriors' or 'Guardians'?," *KVUE*, April 24, 2018, https://www.kvue.com/article/news/local/are-austin-polices-cadets-trained-to-be-warriors-or-guardians/269-545190415.

[16] Russell Falcon, "APD Officers Fired after Previously Cleared of Excessive Force Charges," *KXAN Austin*, March 18, 2019, https://www.kxan.com/news/local/austin/apd-officers-fired-after-previously-cleared-of-excessive-force-charges/.

[17] Austin Sanders, "Activists Call for Firing of APD Leadership in Wake of Officer Involved Shooting," *The Austin Chronicle*, April 27, 2020, https://www.austinchronicle.com/daily/news/2020-04-27/activists-call-for-firing-of-apd-leadership-in-wake-of-officer-involved-shooting/.

[18] Tony Plohetski, "Austin Police Officer Christopher Taylor Charged with Murder in Michael Ramos Shooting," *Austin American-Statesman,* March 10, 2021. https://www.statesman.com/story/news/politics/2021/03/10/michael-ramos-austin-police-department-officer-christopher-taylor-indicted-murder/6940079002/

[19] Kevin Clark, "Austin Police Chief: Force Used against Protesters 'within Policy'," *KXAN Austin,* June 1, 2020, https://www.kxan.com/investigations/austin-police-chief-force-used-against-protesters-within-policy/.

calls", as "Austin has the highest per capita rate of police shootings during mental health calls of the 15 largest US cities."[20]

Resolution 66. On December 5, 2019, the Austin City Council directed the City Manager to initiate a comprehensive audit of APD's training of police cadets and ensure that cadet classes not be resumed until the assessment is completed.[21] Council directed a review of training materials, course content, protocols and procedures; how the department trains on cultural competency; and how the police academy addresses issues of bias, use of force, de-escalation, mental health responses, and protocols for non-English speaking and disabled persons, among other areas. Council further directed that the City Manager track and report on:

- APD training "related to reducing bias, increasing de-escalation, reducing racial disparities in use of force and severity of force, reducing racial disparities in discretionary searches, and improving communication with all individuals regardless of language, ethnicity, sexual orientation, gender identity or disability."
- Recruiting and ways to improve ethnic and gender diversity in cadet classes and whether certain practices and procedures, "including the use of disqualification codes for cadets, have a disparate effect or impact based on race, ethnicity, national origin, sex, religion, sexual orientation, or gender identity."
- Whether the overall balance of training favors efforts to reduce bias-based policing, increase de-escalation techniques, and improving culturally effective communication.
- Police academies elsewhere that have successfully implemented training programs to reduce force incidents and improve communications with diverse communities.
- Ensuring input from "community groups representing those disproportionately affected by policing," including people of color, non-English speaking residents, LGBTQ+ individuals, and persons with disabilities.

Although some of the above areas will be examined in the next phase of Kroll's evaluation of the APD, this report summarizes our findings and recommendations concerning the efficacy and effectiveness of APD's Training Academy in these and other areas.

[20] Robert Sims and Alyssa Goard, "Fatal Use of Force by APD during Mental Health Calls Violates Human Rights, Report Finds," *KXAN Austin*, September 25, 2019, https://www.kxan.com/news/fatal-use-of-force-by-apd-during-mental-health-calls-violates-human-rights-report-finds/.

[21] Audrey McGlinchy, "Austin Orders Sweeping Probe Of Alleged Racism, Bigotry Among Police, Including Social Media Audit," *KUT Radio, Austin's NPR Station*, December 5, 2019, https://www.kut.org/post/austin-orders-sweeping-probe-alleged-racism-bigotry-among-police-including-social-media-audit.

4 BEST PRACTICES FOR POLICE ACADEMIES

Introduction

Of all the areas in policing, training has received the least amount of research attention. In 2015, President Obama's Task Force on 21st Century Policing (Task Force on 21st Century Policing) released a final report that identified six main pillars impacting the law enforcement profession: building trust and legitimacy, policy and oversight, technology and social media, community policing and crime reduction, officer training and education, and officer safety and wellness.[22] The Task Force report included over 150 recommendations and proposed action items for reform. While this work provided a promising roadmap for a path forward, it is important to note that many of the proposed recommendations were *not* evidence-based, in part because rigorous data collection and analysis to assess the utility of these reforms in real-world applications has not been prioritized.[23]

As a result of this lack of evidence, identifying appropriate recommendations for effective police training has been based less on research or empirical evaluations, and more on anecdotal evidence regarding best practices. Identifying these best practices is further challenged by the wide variation in training curricula, techniques, and content taught in police academies. Police training differs significantly across the United States, due in part to the decentralized nature of policing. In particular, police training varies dramatically in content, duration, and delivery for both basic and in-service training.

In general, few forms of police training have been subject to scientific review, but it does appear scholarship in this area is growing. Some forms of police training, including de-escalation training, crisis intervention teams, and procedural justice training have received recent empirical evaluations.[24] [25] [26] [27] These training programs have been correlated with several positive outcomes, such as reductions in use of force incidents, reductions in injuries, and increases in officer knowledge and skills. However, according to a survey conducted by the Police Executive Research Foundation (PERF), on average, officers do not spend a lot of time on these topics.[28] Specifically, academies designate most of their training hours on weapons and

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[22] President's Task Force on 21st Century Policing, "Final Report of the President's Task Force on 21st Century Policing" (Washington, DC: Office of Community Oriented Policing Services, 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[23] See, e.g., Cynthia Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing — Implementation and Research Priorities" (Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University; Alexandria, VA: International Association of Chiefs of Police, 2016), https://cebcp.org/wp-content/evidence-based-policing/IACP-GMU-Evidence-Assessment-Task-Force-FINAL.pdf.

[24] Michael T. Compton et al., "A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs," *Journal of the American Academy of Psychiatry and the Law Online,* 36, no. 1 (2008): pp. 47-55, https://pubmed.ncbi.nlm.nih.gov/18354123/.

[25] Robin Engel et al., "Examining the Impact of Integrating Communications, Assessment, and Tactics (ICAT) De-escalation Training for the Louisville Metro Police Department: Supplemental Findings" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020). https://www.theiacp.org/sites/default/files/Research%20Center/LMPD_ICAT%20Evaluation%20Initial%20Findings%20Report_FINAL%2009212020.pdf.

[26] Li Sian Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey? A Synthetic Control Analysis of Force Outcomes," *Criminology & Public Policy* (2021): pp. 1-35, https://doi.org/10.1111/1745-9133.12536.

[27] Daniel S. Nagin and Cody W. Telep, "Procedural Justice and Legal Compliance," *Annual Review of Law and Social Science*, 13 (2017): pp. 5-28, https://doi.org/10.1111/1745-9133.12499.

[28] Police Executive Research Forum, "Critical Issues in Policing Series: Re-Engineering Training on Police Use of Force" (Washington, DC: Police Executive Research Forum, 2015), https://www.policeforum.org/assets/reengineeringtraining1.pdf.

defensive tactics (more than 120 hours per year), and less on de-escalation, communication skills, or crisis intervention (roughly 26 hours per year). As such, many argue the focus of police training needs to be adjusted.[29]

Others recognize that police training is outdated and needs to include evidence-based, theory-informed curricula and delivery, which will ultimately improve learning and skill retention.[30] [31] While a comprehensive review of the police training literature base has found that there is little evidence around police training modalities and the existing literature is mostly hypothetical or based on other study populations,[32] several studies point towards the utility of repeated content exposure and practice[33] [34] or booster training programs.[35] The Council on Criminal Justice (CCJ) recommends that training content be delivered through a mixture of lecture, real world video examples, scenario-based role playing, and group discussion.[36] Overall, there is little systematic research on police training and scholars have long noted the need for more research on this topic.[37] [38] [39] [40]

After conducting an in-depth examination of the effectiveness of training in the United States, guidance regarding best practices has recently been summarized by the CCJ Task Force on Policing.[41] The CCJ's summary assessment examined the current practice and available research on training duration, content, and delivery, along with certification and national training standards. Through this process, the CCJ identified differences in what they termed a "resiliency-based" approach to training, which teaches officers to "recognize stress and regulate their responses to it", compared to the more typical "stress-oriented" military training approach, which involves "intensive physical demands and psychological pressure."[42] Based on their comprehensive review, they recommend that police training: (1) include more time teaching communication skills, de-escalation tactics, principles of procedural justice, and handling situations that officers are most likely to encounter, (2) adopt a resiliency-based approach rather than stress-oriented

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[29] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment" (Washington, DC: Council on Criminal Justice, Task Force on Policing, 2021), https://councilоncj.foleon.com/policing/assessing-the-evidence/policy-assessments/.

[30] Michael Birzer, "Theory of Andragogy Applied to Police Training," *Policing: An International Journal of Police Strategies & Management*, 26, no. 1 (2003): pp. 29-42, https://doi.org/10.1108/13639510310460288.

[31] Rebecca Mugford, Shevaun Core, and Craig Bennell, "Improving Police Training from a Cognitive Load Perspective," *Policing: An International Journal of Police Strategies & Management*, 32, no. 2 (2013): pp. 312-337, https://doi.org/10.1108/13639511311329723.

[32] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing".

[33] Sean H. Kang, "Spaced Repetition Promotes Efficient and Effective Learning: Policy Implications for Instruction," *Policy Insights from the Behavioral and Brain Sciences,* 3, no. 1 (2016): pp. 12-19, https://doi.org/10.1177/2372732215624708.

[34] Mugford et al., "Improving Police Training from a Cognitive Load Perspective".

[35] Kyle McLean et al., "Randomized Controlled Trial of Social Interaction Police Training," *Criminology and Public Policy*, 13, no. 3 (2020): pp. 805-832, https://doi.org/10.1111/1745-9133.12506.

[36] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment".

[37] Dale R. Buchanan and Patricia A. Perry, "Attitudes of Police Recruits Towards Domestic Disturbances: An Evaluation of Family Crisis Intervention Training," *Journal of Criminal Justice,* 13, no. 6 (1985): pp. 561-572, https://doi.org/10.1016/0047-2352(85)90084-4.

[38] National Research Council, *Fairness and Effectiveness in Policing: The Evidence* (Washington, D.C.: The National Academies Press, 2004).

[39] Wesley Skogan, Maarten Van Craen, and Cari L. Hennessy, "Training Police for Procedural Justice," *Journal of Experimental Criminology,* 11, no. 3 (2015): pp. 319-334, https://doi.org/10.1007/s11292-014-9223-6.

[40] I. D. Winebrenner, *Family Crisis Intervention: The Erie County Project and the Role of the Family Crisis Patrolman* (Erie, PA: Bolte Center Press, 1976).

[41] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment".

[42] *Ibid*, 1.

military training, (3) include periodic recertification beyond firearms training, and (4) develop national standards on training and certification.

In recent years, frequent analyses have also noted the perils of a "warrior" mentality in law enforcement and the need to shift to a more "guardian" approach. In essence, whereas the warrior police officer fights to control and conquer criminals, the guardian serves to protect the community. This metaphor might help explain why police agencies that ostensibly embrace the warrior mentality struggle with excessive uses of force, racial bias, and inappropriate responses to mental health crises; research and common sense dictate that departments ought to model their training principles closer to the guardian image than the warrior one. While this section will reference this dichotomy as it relates to police academy culture and take note of departments that have successfully embraced the guardian mindset, it will focus more specifically on the need to shift towards a resiliency-based approach.

Based primarily on the summary assessment from the CCJ and other trusted academic and editorial sources, the following review summarizes current police academy training best practices consistent with a resiliency-based or guardian-minded approach. The first section explains how paramilitary-style training and recruiting is believed to create a warrior-based culture, the negative consequences of this culture, and steps taken by departments across the country to change it. The second section then highlights some identified best practices of police academy curricula and policy, including an emphasis on de-escalation training, officer intervention, and a commitment to procedural justice. These features are evidenced by studies as well as examples of police forces that have incorporated them.

A Revised Police Academy Culture

The "warrior mentality" is a pervasive feature of modern law enforcement. Emerging fairly recently in the history of the United States, the prevailing mindset to treat crime as an enemy to be conquered and police like soldiers in that battle developed in response to the political 'wars' on drugs and terrorism.[43] This was particularly emboldened after September 11, 2001, when police became increasingly militarized in an effort to combat terrorism.[44]

Characterized by displaying courage in the face of life-threatening situations and fighting to "make it home at all costs," the warrior mentality is often admired in policing for enabling officers to forcefully confront individuals who pose an immediate risk to the public and themselves.[45] But these situations are rare in day-to-day police work; on average, departments devote only four percent of their time responding to violent crime.[46] [47] Instead, most time on the street is spent responding to medical emergencies, mental health crises, and traffic violations, situations that can escalate when officers respond with a warrior mindset, prepared to fight.[48] This is not to say that policing is not a dangerous profession. Compared to all other

[43] Jeff Adachi, "Police Militarization and the War on Citizens," *Human Rights Magazine*, February 1, 2017, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2016-17-vol-42/vol-42-no-1/police-militarization-and-the-war-on-citizens/.

[44] Arthur Rizer and Joseph Hartman, "How the War on Terror Has Militarized the Police," *The Atlantic* (Atlantic Media Company), November 7, 2011, https://www.theatlantic.com/national/archive/2011/11/how-the-war-on-terror-has-militarized-the-police/248047/.

[45] Amaury Murgado, "Developing a Warrior Mindset," *POLICE Magazine*, May 24, 2012, https://www.policemag.com/340761/developing-a-warrior-mindset.

[46] Jeff Asher and Ben Horwitz, "How Do the Police Actually Spend Their Time?," *The New York Times*, June 19, 2020, https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html.

[47] With variation across different municipalities.

[48] Jerry Ratcliffe, *Intelligence-Led Policing* (New York, NY: Routledge, 2016), referenced in Roge Karma, "We Train Police to Be Warriors - and Then Send Them out to Be Social Workers," *Vox*, July 31, 2020, https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training.

occupations, police officers are four times more likely to die from an on-the-job injury.[49] Moreover, officers must be effectively trained to handle acute situations in which the public is put in danger from a violent criminal. But in the greater context of police work, seeing oneself primarily as a "warrior" is a precarious mindset. As noted by Seth Stoughton, a former officer and current professor at the University of South Carolina School of Law, when officers are taught to see citizens as potential threats to their life, they learn to fear them.[50] Thus, interactions between the police and the community often start with suspicion, vigilance, and caution, and positive encounters become infrequent, if not impossible. Furthermore, since officers are taught to physically control their space and react forcefully to noncompliance, they sometimes escalate otherwise peaceful encounters, making situations more dangerous for both sides.

Some experts have noted that military-style boot camps and "stress-oriented" training styles might foster this warrior mentality. The majority of police academy training in the United States is based on a military training approach that reinforces intensive physical demands, psychological pressure, and chain-of-command decision making. In these settings, instructors act like Marine drill sergeants, yelling orders and punishing recruits for minor infractions; recruits, in turn, must respond to orders with calls of 'Yes Sir!' or 'Yes Ma'am!'[51] Based on a 2013 survey of police academies, this stress oriented approach to training is used as the sole approach, or in combination with other styles, in over 80% of training academies; only about one in five (18%) academies reported using "non-stress" models for instruction.[52] While this training style may instill discipline and foster a battle-ready mentality, it may also demonstrate that it is acceptable to belittle those with less power.

Other components of the military model may also be inconsistent with the demands of modern policing. For instance, when officers graduate from the academy and start working on patrol, they must regularly make independent, discretionary choices that require critical thinking skills; military-style academies that emphasize strict adherence to authoritative rules over independent decision making may not adequately prepare officers to make the kinds of discretionary choices required on a day-to-day basis.[53] Moreover, the use of recruiting videos and web content that routinely feature high-action sequences and appeals to strength and violence over service can send the wrong message about the nature of policing in a progressive urban environment.[54] [55] [56]

A distinct but likewise ubiquitous problem with the culture in many academies is the lack of accountability among fellow officers; officers rarely report their peers for breaking rules or acting inappropriately. While this behavior is not enforced explicitly through policy, officers may learn early in the academy that if you

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[49] "Fact Sheet | Police Officers | August 2016," *U.S. Bureau of Labor Statistics,* August 2016, https://www.bls.gov/iif/oshwc/cfoi/police-officers-2014.htm.

[50] Seth Stoughton, "Law Enforcement's 'Warrior' Problem," *Harvard Law Review*, April 10, 2015, https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/.

[51] Rosa Brooks, "Stop Training Police Like They're Joining the Military," *The Atlantic* (Atlantic Media Company), August 12, 2020, https://www.theatlantic.com/ideas/archive/2020/06/police-academies-paramilitary/612859/.

[52] Brian A. Reaves, "State and Local Law Enforcement Training Academies 2013" *U.S. Department of Justice* (Office of Justice Programs, Bureau of Justice Statistics, 2016), https://www.bjs.gov/content/pub/pdf/slleta13.pdf.

[53] Sue Rahr and Stephen K. Rice, "From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals," *Harvard Kennedy School* (National Institute of Justice), April 2015, 6, https://www.ojp.gov/pdffiles1/nij/248654.pdf.

[54] "The Newport Beach Police Dept—Are You Qualified," *youtube.com*, November 14, 2008, https://www.youtube.com/watch?v=w_rKA6ROAVk.

[55] City of Palm Beach Gardens, "Palm Beach Gardens Police Department- Recruitment Video," *youtube.com,* May 26, 2020, https://www.youtube.com/watch?app=desktop&v=-Ftkjd19j5k.

[56] Andrew Wolfson, "Louisville Police Recruiting Video Lures 'Action-Movie Heroes,' Not Guardians, Experts Say," *Louisville Courier Journal*, January 23, 2021, https://www.courier-journal.com/story/news/local/2020/07/14/lmpd-recruiting-video-seeks-warriors-not-guardians-experts-warn/5390736002/.

report a peer, you will be ostracized.[57] This is sometimes referred to as "the blue wall of silence," and its pervasiveness in some police agencies' culture has been well documented.[58] [59] Officers bound to the duty to protect their own serve to reinforce the "us versus them" dynamic that exacerbates the warrior concept.

These factors create a problematic culture among police officers in many academies. While curriculum and policy changes in academies are necessary for improving police and community relations, reforming the academy culture based on stress-oriented training is an important first step. As discussed in the final report of the Task Force on 21st Century Policing, "any law enforcement organization can make great rules and policies that emphasize the guardian role, but if policies conflict with the existing culture, they will not be institutionalized and behavior will not change."[60]

Using a different training approach, police academies can establish a guardian-centric culture that focuses on service to the community rather than fighting crime, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, "resiliency-based" training has been shown to have several positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression.[61] Experts contend that this training style—which emphasizes strengthening officers' critical decision-making skills, communication, and emotional intelligence skills—is better associated with the skills and tactics necessary to handle complex situations that officers are likely to face in the field. As noted by the CCJ, "while there is no rigorous evidence that examines the current composition of policing training content in the United States compared to potential alternatives, there is some evidence that training which enhances human interaction skills may improve officer-civilian interactions and reduce use of force."[62]

The seminal model for the resiliency-based approach was pioneered by Sue Rahr, a former police chief and member of the Task Force on 21st Century Policing. Lead by Rahr, the Washington State Criminal Justice Training Commission (WSCJTC), which trains every recruit in Washington State, began fostering an improved training culture. Before 2012, the commission operated in the paramilitary-style, with officers required to stand at attention when addressed by their superiors and berated for failing to complete challenges meant to be impossible. Classroom visual aids also reinforced the military mindset, with handcuffs, nightsticks, and skulls and crossbones proudly displayed.[63]

To establish a more resiliency-based model, Rahr instituted several reforms. For example, rather than have recruits salute staff members, they are now required to initiate eye contact and conversation. In trophy cases and on walls, symbols glorifying the pride and danger of policing were replaced by visual aids representing the higher purpose and duty of the job, like the Constitution and Declaration of Independence. Frequent seminars, discussions, and exercises also encourage open communication and mindfulness. And

[57] Rich Schapiro, "'If You Snitch, Your Career Is Done': Former Baltimore Cop Says He Was Harassed, Labeled a 'Rat' after Attempt to Root out Police Brutality," *nydailynews.com*, January 14, 2015, https://www.nydailynews.com/news/crime/ex-baltimore-labeled-rat-police-brutality-claim-article-1.2077632.

[58] "Blue Wall of Silence: The Record," *The Marshall Project*, 2014, https://www.themarshallproject.org/records/605-blue-wall-of-silence.

[59] A clear example of this can be seen from a Department of Justice Report criticizing the culture of silence in the Chicago Police Department in 2017.

[60] Task Force on 21st Century Policing, "Final Report," 12.

[61] Rollin McCraty and Mike Atkinson, "Resilience Training Program Reduces Physiological and Psychological Stress in Police Officers," *Global Advances in Health and Medicine,*1, no. 5 (2012): pp. 44-66, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4890098/.

[62] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment," 4.

[63] Rahr and Rice, "From Warriors to Guardians".

while physical tests remain rigorous, instructors now encourage recruits to keep pushing, rather than berating or punishing them for failure.[64]

Additionally, while the paramilitary model tended to teach recruits through behavioral methods (punishing or rewarding success to reinforce proper conduct), the Washington State training commission now emphasizes the importance of adult learning methods, which modern psychological evidence suggests is more effective at teaching recruits.[65] In particular, the commission uses job-related case studies and student-led discussions to encourage the development of critical thinking skills and increased emotional intelligence.[66]

These new training methods, along with changes to academy curricula emphasizing de-escalation over tactical force, have transformed the commission into a model for resiliency-based training. Other organizations have likewise developed models and methods for improving academy culture. The Innovative Policing Program (IPP), designed by faculty at Georgetown Law School, aims to rethink the role of police in enhancing public safety. Through training seminars, lectures, and workshops, the program has worked with many large departments to educate and work with officers on issues relating to racial injustice. Along with the Metropolitan Police Department (MPD) in Washington D.C., IPP has run programs to teach recruits to discuss the role of police in perpetuating racial injustice and has brought in many police and criminal justice experts to speak about policing in today's world.[67] The MPD has also inserted civilians into some senior-academy positions, a move signaling a break from a military-style culture.[68] Several other organizations have also been on the forefront of addressing peer accountability among officers.

In combination with other reforms to the stress-oriented training model, these new approaches are recognized as an important step towards reforming police culture to become more consistent with respectful and constitutional policing.

Policy and Curriculum Best Practices

Rebuilding police culture in the image of a community-oriented, service provider is a significant first step in reforming academies, but concrete policy and curriculum changes are necessary as well. Specifically, academies must design their training programs to address and resolve concerns regarding police-community relations and racial bias. The following are major areas of focus in police reform efforts that are consistent with this recommended change in academy culture. While this list focuses on and describes several of the major topics of academy reform, it does not include all potential areas of best practices.

Procedural Justice

Distrust between the police and communities of color is a significant barrier to effective policing. Over the last 30 years, public trust and confidence in the police has decreased despite consistent reductions in

[64] Josh Sanburn, "The Woman Who Is Restoring Order to Law," *Time* , October 13, 2016, https://time.com/collection-post/4527347/2016-election-policing/.

[65] Michael Birzer, "Theory of Andragogy Applied to Police Training".

[66] Daniel M. Blumberg et al., "New Directions in Police Academy Training: A Call to Action," *International Journal of Environmental Research and Public Health* 16, no. 24 (December 6, 2019): 4941, p. 3, https://doi.org/10.3390/ijerph16244941.

[67] "Innovative Policing Program," *Innovative Policing Program*, https://www.law.georgetown.edu/innovative-policing-program/.

[68] Brooks, "Stop Training Police Like They're Joining the Military".

violent crime rates.[69] At the time of this writing, trust and confidence in policing has reached a modern-day low, where only 48% of Americans indicated they felt confidence in the police.[70]

When communities lack trust in the police and believe that officers treat them unfairly, they are less likely to work collaboratively with law enforcement and less likely to defer to law and authority.[71] Extensive research has shown that trust and confidence in law enforcement has a significant impact on public safety.[72] For communities to trust the police, they need to see them as legitimate. The principle of procedural justice focuses on the public's perception of the legitimacy of law enforcement.

Scholars and police experts agree that to gain legitimacy, the police need to follow four main principles: (1) allow people to explain themselves or state their case before judgment, (2) react to real evidence and enforce the law consistently, without bias, (3) treat citizens with dignity and respect, and (4) present themselves with physical cues that show compassion and trustworthiness rather than arrogance and disdain.[73] Studies have consistently shown that responding to each of these concerns contributes to an increase in the perceived legitimacy of the police in the community.[74]

Many departments have acknowledged the importance of procedural justice in modern policing and have begun to develop training programs to address it. These programs work to educate officers on the importance of procedural justice and provide them with the tools to address the four tenets of concern. Most notable in these efforts is the curriculum in procedural justice developed and implemented in 2012 within the Chicago Police Department (CPD)—with the assistance of academics Tom Tyler and Tracey Meares—that was attended by all CPD officers.[75] The initial "Legitimacy and Procedural Justice Training" course aimed to provide a clear understanding of the concept of procedural justice and the application of its principles to police work. After running the first session, the department designed a second phase of the program to reinforce the core concepts through scenario-based training and videos illustrating community-member perspectives.

An empirical evaluation of the CPD training program demonstrated some success. For example, a vast majority of officers (95%) reported positive attitudes after the training about resolving the concerns of the community, with these attitudes for the most part remaining in the long term.[76] Moreover, a 2020 study measuring the effects of the program on police use of force and complaints against officers found that the

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[69] Craig Fischer, ed., "Legitimacy and Procedural Justice: A New Element of Police Leadership" (Washington, DC: Police Executive Research Forum, March 2014), 1-2, https://www.policeforum.org/assets/docs/Free_Online_Documents/Leadership/legitimacy%20and%20procedural%20justice%20-%20a%20new%20element%20of%20police%20leadership.pdf.

[70] Megan Brenan, "Amid Pandemic, Confidence in Key U.S. Institutions Surges," *Gallup*, August, 2020, https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx.

[71] Fischer, "Legitimacy and Procedural Justice," 2.

[72] "Procedural Justice," *Truth & Justice*, https://trustandjustice.org/resources/intervention/procedural-justice. (see list of research links at bottom of webpage).

[73] Fischer, "Legitimacy and Procedural Justice," 9-10.

[74] Steven L. Blader and Tom R. Tyler, "A Four-Component Model of Procedural Justice: Defining the Meaning of a 'Fair' Process," *Personality and Social Psychology Bulletin* 29, no. 6 (June 1, 2003): pp. 747-758, https://doi.org/10.1177/0146167203029006007.

[75] Daniela Gilbert, Stewart Wakeling, and Vaughn Crandall, "Procedural Justice and Police Legitimacy: Using Training as a Foundation for Strengthening Community-Police Relationships," (Oakland, CA: California Partnership for Safe Communities, February 2015), https://bja.ojp.gov/sites/g/files/xyckuh186/files/bwc/pdfs/procedural-justice-and-police-legitimacy-paper-cpsc-feb-2015.pdf.

[76] *Ibid*.

timing of the training corresponded with a 10% reduction in complaints against officers and a 6.4% reduction in police use of force against civilians.[77]

Chicago's procedural justice training program has been adopted by many police agencies across the United States. Shortly after the program was introduced, representatives from the CPD ran workshops for several municipalities in California, including Oakland, Stockton, and Salinas, each of whom then designed their own programs to address the unique circumstances of their cities. For instance, with a particularly tense relationship between the Oakland Police Department and the city's community, Oakland included community leaders in planning their revised training program.[78] More departments are also continuing to build upon this program, including Birmingham, Fort Worth, Minneapolis, and Pittsburgh, for instance, while others like Seattle, have developed their own. Many of these programs have been equally successful; in Seattle, procedural justice training correlated to reductions in use of force incidents ranging from 16 to 50 percent.[79]

Experts have also called for departments to address procedural justice concerns internally—that is, to establish care for the four tenets of concern in procedural justice among department members themselves. For example, research has shown that when officers feel respected by their supervisors, they are more likely to support and comply with decisions.[80] Moreover, treating recruits in the academy with respect and dignity allows them to feel happier and have a greater sense of self-worth, which in turn provides them with a deeper connection to an agency's mission and values.[81]

Rahr's training commission espouses both external and internal procedural justice through a philosophy called LEED—Listen and Explain with Equity and Dignity. While not taught through a particular course, the LEED model teaches officers to always listen to people when they explain their story, explain what they are doing, use and express consideration for fairness when acting, and treat people with dignity.[82]

Community Policing Programs

A commitment to procedural justice goes hand-in-hand with community-oriented policing, or an emphasis on working cooperatively with people in neighborhoods to solve problems of public concern.[83] In doing so, police and the community garner a shared responsibility for maintaining order and public safety; community residents become more active in crime prevention, while police departments become more responsive to community concerns. Unlike traditional policing, which responds to calls for service once a crime is committed, community-oriented policing is focused on identifying underlying conditions for crime and

[77] George Wood, Tom R. Tyler, and Andrew V. Papachristos, "Procedural Justice Training Reduces Police Use of Force and Complaints against Officers," *Proceedings of the National Academy of Sciences* 117, no. 18, (2020): 9815-9821, https://doi.org/10.1073/pnas.1920671117.

[78] Gilbert et al., "Procedural Justice and Police Legitimacy," 10.

[79] Emily Owens et al., "Can You Build a Better Cop?," *Criminology & Public Policy* 17, no. 1 (2018): 41-87, https://doi.org/10.1111/1745-9133.12337.

[80] Nicole E. Haas, Maarten Van Craen, Wesley G. Skogan, and Diego M. Fleitas. "Explaining Officer Compliance: The Importance of Procedural Justice and Trust inside a Police Organization." *Criminology & Criminal Justice* 15, no. 4 (January 20, 2015): 442–63. https://doi.org/10.1177/1748895814566288.

[81] Charlene Moe and Melissa Bradley, "Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors," *The Beat*, April 2015, https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.

[82] Sue Rahr, John Diaz, and Joe Hawe, "The Four Pillars of Justice Based Policing" (Washington State Criminal Justice Training Commission, n.d.), https://www.rampagelaw.com/wp-content/uploads/sites/1500041/2020/02/05-Justice-Based-Policing-LEED.pdf.

[83] "Community Policing," *National Police Foundation*, https://www.policefoundation.org/projects-old/community-policing/.

collaborating with the public to address these conditions proactively.[84] This is often achieved through frequent meetings with community members to provide advice and encourage neighborhood watch groups, decentralization of authority and increased officer discretion, and cooperation with other public agencies and stakeholders.[85]

According to the Task Force on 21st Century Policing, community policing programs have been shown to reduce crime rates because they facilitate trust between the community and the police.[86] Moreover, since community policing programs often give officers greater discretion to respond to community concerns, evidence suggests these programs improve police job satisfaction.[87] Community policing has been cited as a major force behind decreasing crime rates, particularly in Boston, where every major category of crime has decreased in the last couple of decades.[88]

While an effective community policing program goes beyond academy training, proposals for reform that focus on the academy are promising. In the Task Force on 21st Century Policing, several recommendations for officer training and education focus on building community relations.[89] For example, the task force recommends that law enforcement agencies engage and involve community members in the training process, and that agencies ensure basic training includes lessons on improving social interactions. In addition, academics and police experts like Seth Stoughton have proposed initiatives that require recruits to initiate non-enforcement contacts with community members.[90] By engaging in meaningful conversations without being able to use enforcement tactics, such a program would allow would-be officers to connect with community members less formally, building ties and allowing for easier cooperation with the community.

De-escalation Training

Widely shared incidents of excessive use of force by police officers, particularly against minorities, have led to increased public scrutiny into use-of-force training policies in police academies. In addressing an officer's decision to use force, most academies teach a decision model described as the "use-of-force continuum" which advises officers to always react with more force and more powerful weapons than the individuals they confront.[91] However, as Sue Rahr explained, while some situations require officers to quickly take control with aggressive force, "in most situations, it's better if officers know how to de-escalate, calm things down, slow down the action."[92] As such, experts like Rahr argue that police academies ought to teach their cadets skills necessary for de-escalation.

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[84] William M. Rohe, Richard E. Adams, and Thomas A. Arcury, "Community Oriented Policing: What It Is - Why It Works - How to Get Started" (Chapel Hill, NC: The University of North Carolina Center for Urban and Regional Studies; The North Carolina Department of Crime Control and Public Safety, January 1997), https://www.ojp.gov/pdffiles1/Digitization/169113NCJRS.pdf.

[85] "Examples of Effective Community Engagement," *Ohio Collaborative Community-Police Advisory Board*, https://ericmembers.org/wp-content/uploads/2018/05/Examples-Community-Police-Engagement_Ohio.pdf

[86] Task Force on 21st Century Policing, "Final Report," 3.

[87] *Ibid*, 41.

[88] Thejasa Jayachandran, "Community Policing: A Success Story?: Rise of Community Policing," *Pioneer Institute*, August, 10, 2016, https://pioneerinstitute.org/better_government/community-policing-success-story/.

[89] Task Force on 21st Century Policing, "Final Report".

[90] Seth Stoughton, "Law Enforcement's 'Warrior' Problem".

[91] Isidoro Rodriguez, TCR Staff, and Andrea Cipriano, "Police in America: Warriors or Peacemakers?," *The Crime Report,* June 18, 2018, https://thecrimereport.org/2018/06/18/police-in-america-warriors-or-peacemakers/.

[92] Kimberly Kindy, "These Police Recruits Are Being Trained to Be Guardians, Not Warriors," *The Washington Post*, December 10, 2015, https://www.washingtonpost.com/sf/investigative/2015/12/10/new-style-of-police-training-aims-to-produce-guardians-not-warriors/.

Despite support for de-escalation training from Rahr and other experts, though, we do not know precisely the impact this type of training has on police-citizen interactions.[93] [94] Even the term "de-escalation" lacks an evidence-based definition in the policing field.[95] [96] Broadly speaking, nursing and psychiatry fields refer to de-escalation as a process used to prevent, reduce, or manage aggressive behavior during an interaction between two or more persons.[97] The *National Consensus Policy and Discussion Paper on Use of Force,* released in October 2017, was one of the first documents to define de-escalation as it relates to policing. They proposed the following definition:

> *Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.*[98]

Rather than a description of the tactics or process, others have recommended a more succinct definition. For example, based on feedback gathered during focus groups with police officers, Todak and White define de-escalation as "bringing a situation or citizen in crisis back to a calm state, using the least amount of force possible."[99]

Proponents of de-escalation training within law enforcement agencies argue that this type of training provides officers with enhanced skills to resolve conflicts in highly confrontational situations without the use of force.[100] In turn, an officer's ability to defuse these encounters enhances both officer and civilian safety in police-citizen interactions. Critics of de-escalation training, however, suggest these tactics contradict traditional policing operational responses, increasing officers' risk for injury by encouraging slow responses to potentially volatile situations.[101] [102] Unfortunately, available research on the impacts of de-escalation training provides limited insight on arguments pertaining to the efficacy of this training. Like most training programs implemented within law enforcement, de-escalation training has not been the subject of

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[93] Robin S. Engel, Hannah D. McManus, and Tamara D. Herold, "Does De-escalation Training work? A Systematic Review and Call for Evidence in Police Use of Force Reform," *Criminology & Public Policy*, 19, no. 3 (2020): pp. 721-759, https://doi.org/10.1111/1745-9133.12467.

[94] Robin Engel, Hannah D. McManus, and Gabrielle T. Isaza, "Moving Beyond "Best Practice": Experiences in Police Reform and a Call for Evidence to Reduce Officer-involved Shootings," *ANNALS of the American Academy,* 687, no.1 (2020): pp. 147-165, https://doi.org/10.1177/0002716219889328.

[95] Engel et al., "Does de-escalation training work?".

[96] Natalie Todak and Lois James, "A systematic social observation study of police de-escalation tactics," *Police Quarterly,* 21, no. 4 (2018): pp. 509-543, https://doi.org/10.1177/1098611118784007.

[97] Engel et al., "Does de-escalation training work?".

[98] International Association of Chiefs of Police, "National Consensus Discussion Paper on Use of Force and Consensus Policy," (Alexandria, VA: Contributing Organizations, 2017), https://www.theiacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force-and-consensus-policy.

[99] Natalie Todak and Michael D. White, "Expert officer perceptions of de-escalation in policing," *Policing: An International Journal.* 42, no. 5 (2019): 842, https://doi.org/10.1108/PIJPSM-12-2018-0185.

[100] Janet R. Olivia, Rhiannon Morgan, and Michael T. Compton, "A Practical Overview of De-Escalation Skills in Law Enforcement: Helping Individuals in Crisis While Reducing Police Liability and Injury," *Journal of Police Negotiations*, 10, no. 1: 15-29 (2010), https://doi.org/10.1080/15332581003785421.

[101] David Blake, "Does de-escalation endanger police officers or save lives?" *PoliceOne*, 2017, https://www.policeone.com/Officer-Safety/articles/455355006-Does-de-escalation-endanger-police-officers-or-save-lives/.

[102] Tom Jackman, "De-escalation training to reduce police shootings facing mixed reviews at launch," *The Washington Post*, 2016, https://www.washingtonpost.com/local/public-safety/de-escalation-training-to-reduce-police-shootings-facing-mixed-reviews-at-launch/2016/10/14/d6d96c74-9159-11e6-9c85-ac42097b8cc0_story.html.

substantial empirical evaluation.[103] [104] As a result, little is known regarding the development, delivery, and impact of this type of training.

The most comprehensive study to date, however, shows promising results for a de-escalation training program called Integrating Communications Assessment and Tactics (ICAT). Developed as a national model for de-escalation training by PERF and hundreds of police professionals across the United States, the ICAT program aims to "provide first responding police officers with the tools, skills, and options they need to successfully and safely defuse a range of critical incidents."[105] Specially designed to account for situations involving unarmed individuals experiencing mental health or other crises (situations that can lead to fatal encounters if the police respond aggressively),[106] ICAT encourages officers to create distance, use physical cover as protection, buy time speaking rather than commanding, and in general slow things down.[107]

Implemented with the Louisville Metro Police Department (LMPD), researchers found that ICAT demonstrated a statistically significant 28% reduction in officer use of force, 26% reduction in citizen injuries, and 38% reduction in officer injuries that corresponded directly with the training. This study, conducted by Robin Engel and her colleagues at the University of Cincinnati, represents the first large-scale, rigorous empirical evaluation of police de-escalation training that has demonstrated a significant reduction in police use of force. Further, the ICAT training specifically is the only de-escalation training curricula with clear and strong evidence regarding its impact on police behavior.[108]

Already adopted by almost 100 departments in the country, including Louisville, Camden, and Baltimore, the program has proven successful. As described above, evaluation of the program's implementation in Louisville found that ICAT led to significant reductions in use of force incidents, officer injury, and citizen injury.[109] In Camden, the ICAT program, in combination with a variety of other new policies and training, led to excessive force complaints dropping from 65 in 2014 to 12 in 2017, and overall crime rates dropping 23 percent since 2013.[110] A second study of ICAT in Camden demonstrated a 40% reduction in serious force incidents for the police department, providing further optimism regarding de-escalation training and policies.[111]

Other anecdotal accounts have reported reductions in officer use of force after implementation of enhanced de-escalation training. In San Francisco, for instance, a new training program corresponded with a 24 percent decrease the following year.[112] In Newark, no officer fired a single shot while on duty in 2020 to

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[103] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing".

[104] National Research Council, "Fairness and Effectiveness in Policing".

[105] "ICAT: Integrating Communications, Assessment, and Tactics," *Police Executive Research Forum*, https://www.policeforum.org/icat.

[106] Heather Carroll, "Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters," *Treatment Advocacy Center*, December 2015, https://www.treatmentadvocacycenter.org/overlooked-in-the-undercounted.

[107] Rodriguez et al., "Police in America".

[108] Engel et al., "Examining the Impact of ICAT".

[109] *Ibid.*

[110] Rodriguez et al., "Police in America".

[111] Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey?".

[112] Dan Morse and Tom Jackman, "Police De-Escalation Training Gaining Renewed Clout as Law Enforcement Seeks to Reduce Killings," *The Washington Post*, October 27, 2020, https://www.washingtonpost.com/local/deescalation-training-police/2020/10/27/3a345830-14a8-11eb-ad6f-36c93e6e94fb_story.html.

which the department credits their de-escalation program.[113] While more studies should be conducted to determine the precise causal effects of these training programs, these results provide initial promising evidence that an emphasis on de-escalation is safer for both the police and the community.

Crisis-Intervention Team (CIT) Training

Public attention and acceptance of mental illness have grown in recent years.[114] Of particular concern for activists is the relationship between police and individuals with mental illness. Since 2015, almost a quarter of fatal shootings by police officers involve persons with mental illness.[115] Responding to growing concerns over people with mental illness traumatized and even dying in police custody, in 1988, the National Alliance on Mental Illness (NAMI) provided funding for a community task force in Memphis called the Crisis Intervention Team (CIT) to oversee a training program for Memphis Police Department Officers.[116] The training was designed to keep people with mental illness safe during a mental health crisis and teach officers to connect those in crisis with proper treatment services, rather than conducting an arrest, when possible. Today, there are over 3,000 CIT programs across the world.[117] These programs are community-based and rely on partnerships between police organizations, mental health advocates, and people living with mental health issues.

Once a department implements a CIT program, officers who volunteer and pass screening can receive 40 hours of classroom training to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis. Once trained, these officers serve as specialized responders to mental health crisis calls. The goal of the CIT model is to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges.

The Memphis CIT model is one of several training programs designed to facilitate better police responses to behavioral and mental health crises.[118] For example, the co-responder team program pairs trained police officers with mental health professionals to respond to situations involving an individual experiencing a behavioral health crisis.[119] Law Enforcement Assisted Diversion (LEAD) is a pre-booking diversion model that serves to divert individuals charged with minor offenses to community-based mental health or addiction services.[120] Case management team models partner police and behavioral health professionals in the identification, engagement, and case management of individuals with serious mental illness or disability.[121]

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[113] News 12 Staff, "Newark Police: No Officer Fired a Single Shot in 2020, Thanks to De-Escalation Program," *News 12 - The Bronx*, December 30, 2020, https://bronx.news12.com/newark-police-no-officer-fired-a-single-shot-in-2020-thanks-to-de-escalation-program.

[114] Sophie Bethune, "Survey: Americans Becoming More Open About Mental Health," *American Psychological Association*, May 1, 2019, *https://www.apa.org/news/press/releases/2019/05/mental-health-survey*.

[115] *Julie Tate et al., "Fatal Force," The Washington Post, March 28, 2021, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?itid=lk_inline_manual_3*.

[116] Laura Usher et al., "Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises" (Memphis, TN: CIT International, 2019), https://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20Guide%20Interactive%20Web%20Version%20Final.pdf.

[117] *Ibid,* 2.

[118] https://www.theiacp.org/projects/academic-training-to-inform-police-responses

[119] Hannah McManus et al., "Assessing the Impact of Co-Responder Team Programs: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[120] Hannah McManus et al., "Assessing the Impact of Law Enforcement Assisted Diversion (LEAD): A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[121] Hannah McManus et al., "Law Enforcement-Based Case Management Services: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

And mobile crisis team models (MCTs) are a mental-health based response in which an interdisciplinary team of mental health professionals rapidly respond to behavioral health crises.[122] While CIT has arguably been the most popular behavioral crisis response model (and is currently employed by APD), each one described provides its own unique benefits and challenges, and should all be considered as viable options for police departments.

Since the inception of CIT, there have been several evidence-based evaluations of the training's effectiveness. While the literature shows some mixed results particularly concerning the precise effects of training on favorable community outcomes like reduced incarceration, there is encouraging evidence of positive effects of CIT training on officer behavior, attitudes, and knowledge of relevant issues.[123] For example, CIT training improves officer knowledge surrounding behavioral health-related challenges and increases officer confidence in their ability to successfully intervene in a crisis incident.[124] [125] [126] [127] Moreover, research has shown that for CIT-trained officers, conducting a referral or transport was more likely and conducting an arrest less likely than for officers without training.[128]

While CIT training has proved effective in several areas of concern, it is, by itself, an insufficient solution to the broader problem of police responses to mental health calls. According to the executive director of CIT International, Ron Bruno, some departments see the 40-hour CIT training as merely a box to check off, and they do not take the appropriate steps to integrate the program into the wider mental health care system.[129] Ideally, Bruno argues, efforts need to be focused on increasing broader community resources for individuals with mental illness to allow responses to crises that do not involve law enforcement; merely training police officers does not directly address this issue. Departments should continue to build relationships and cooperate with local mental health services as well as supplement CIT training with additional programs to reduce stigma.[130] While CIT training provides officers with more tools to do their jobs safely and effectively and can improve their knowledge of mental illness and community resources, additional programs may be warranted as well.

Peer Intervention Training

The science on why good people fail to act when they ethically should act has been the subject of scientific inquiry for decades, originating from discussions on inaction during the holocaust.[131] It has been applied in

[122] Hannah McManus et al., "Assessing the Impact of Mobile Crisis Teams: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[123] Amy C. Watson, Michael T. Compton, and Jeffery N. Draine, "The Crisis Intervention Team (CIT) Model: An Evidence-based Policing Practice?" *Behavioral Sciences & the Law,* 35, no. 5-6 (2017): pp. 431-441, https://doi.org/10.1002/bsl.2304.

[124] *Ibid.*

[125] Randy Borum et al., "Police Perspectives on Responding to Mentally Ill People in Crisis: Perceptions of Program Effectiveness," *Behavioral Sciences & the Law*, 16, no. 4 (1988): pp.393-405, https://doi.org/10.1002/(SICI)1099-0798(199823)16:4<393::AID-BSL317>3.0.CO;2-4.

[126] Michael T. Compton et al., "Crisis Intervention Team Training: Changes in Knowledge, Attitudes, and Stigma Related to Schizophrenia," *Psychiatric Services*, 57, no. 8 (2006): pp. 1199-1202, https://doi.org/10.1176/ps.2006.57.8.1199.

[127] Michael T. Compton et al., "A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs".

[128] Michael T. Compton et al., "The Police-Based Crisis Intervention Team (CIT) Model: II. Effects on Level of Force and Resolution, Referral, and Arrest," *Psychiatric Services*, 65, no. 4 (2014): pp. 523-529, https://doi.org/10.1176/appi.ps.201300108.

[129] Eric Westervelt, "Mental Health and Police Violence: How Crisis Intervention Teams are Failing," *National Public Radio*, September 18, 2020, https://www.npr.org/2020/09/18/913229469/mental-health-and-police-violence-how-crisis-intervention-teams-are-failing.

[130] Cassidy B. Haigh, Anne L. Kringen, and Jonathan A. Kringen, "Mental Illness Stigma: Limitations of Crisis Intervention Team Training," *Criminal Justice Policy Review,* 31, no. 1 (2018): pp. 42-57, https://doi.org/10.1177/0887403418804871.

[131] Ervin Staub, *The Roots of Goodness and Resistance to Evil: Inclusive Caring, Moral Courage, Altruism Born of Suffering, Active Bystandership, and Heroism* (Oxford, England: Oxford University Press, 2015).

other areas such as drunk driving,[132] airlines,[133] medical sciences,[134] prevention of sexual assault,[135] and prevention of genocide.[136] Clearly, the principles of bystandership and peer intervention are not new, but their application to the policing practice has been limited.[137] Given the scarcity of effective peer intervention into officer misconduct, many have called for programs specifically designed for this purpose.

One of the first peer intervention training programs, *Ethical Policing Is Courageous* (EPIC), was designed to prevent and mitigate police officer mistakes and misconduct. First developed and implemented by the New Orleans Police Department (NOPD) pursuant to a federal consent decree in 2016, EPIC is built upon the social science research regarding "bystandership." A bystander is any witness who is in a position to understand what is occurring and can take action; a *passive* bystander is one who fails to intervene when the circumstances warrant action and an *active* bystander is one who does.[138] EPIC aims to increase active bystandership to promote peer intervention by officers who will intervene in another's action to prevent or reduce misconduct or mistakes, particularly in use-of-force situations.

The NOPD developed this department-wide program due to the explicitly stated requirement of developing a use-of-force training that emphasized ethical decision making and peer intervention from their Consent Decree with the US Department of Justice.[139] EPIC teaches officers how to intervene safely and effectively with learnable skills. There are several elements of EPIC training that are based on research. For example, EPIC emphasizes the power of active bystanders[140] as well as the inhibitors of action,[141] based on research from social psychology. Scholars note that for a program like EPIC to succeed in a police department, a culture change is required through the involvement and support of superior officers.[142]

EPIC has not yet been subject to formal evaluation, but the NOPD reported preliminary program success through significant reductions in citizen complaints[143] and several officer anecdotal accounts of program

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[132] Nancy Lee and Philip Kotler, *Social Marketing Changing Behaviors for Good* (Los Angeles, CA: Sage Publications, 2008).

[133] Robert O. Besco, "To Intervene or not to Intervene? The Co-pilot's Catch 22," *Proceedings of the Human Factors and Ergonomics Society Annual* Meeting, 39, no. 1 (1995): pp. 20-24, https://doi.org/10.1177/154193129503900106.

[134] Stephanie Shapiro, "A Renewed Call to 'do no harm'," *John Hopkins Medicine DOME*, 62, no. 8 (2011): 6, http://www.hopkinsmedicine.org/news/publications/dome/issues.

[135] Shawn Burn, "A Situational Model of Sexual Assault Prevention Through Bystander Intervention," *Sex Roles*, 60, no. 11 (2009): pp. 779-792, https://doi.org/10.1007/s11199-008-9581-5.

[136] Ervin Staub et al., "Healing, Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killing: An Intervention and its Experimental Evaluation in Rwanda. *Journal of Social and Clinical Psychology*, 24, no. 3 (2005): pp. 297–334, https://doi.org/10.1521/jscp.24.3.297.65617.

[137] Jonathan Aronie and Christy E. Lopez, "Keeping Each Other Safe: An Assessment of the Use of Peer Intervention Programs to Prevent Police Officer Mistakes and Misconduct, Using New Orleans' EPIC Program as a Potential National Model. *Police Quarterly*, 20, no. 3 (2017): 295-321, https://doi.org/10.1177/1098611117710443.

[138] Ervin Staub, *Training active bystanders: A curriculum for school and community* (Orange MA: Quabbin Mediation, Inc., 2007), http://people.umass.edu/estaub/TAB_curricuulum.pdf.

[139] "Consent Decree Regarding the New Orleans Police Department," *Nola.gov*, 2012, https://www.nola.gov/nopd/nopd-consent-decree/.

[140] Ervin Staub, "Helping a Distressed Person: Social, Personality, and Stimulus Determinants," *Advances in experimental social psychology*, 7 (1974): pp. 293–342, (New York, NY: Academic Press), https://doi.org/10.1016/S0065-2601(08)60040-4.

[141] Bibb Latane and John Darley, *The Unresponsive Bystander: Why Doesn't He Help?* (New York, NY: Appleton-Crofts, 1970).

[142] Ervin Staub, "Witnesses/bystanders: The tragic fruits of passivity, the power of bystanders, and promoting active bystandership in children, adults, and groups," *Journal of Social Issues,* 75, no. 4 (2019):pp. 1262-1293, https://doi.org/10.1111/josi.12351.

[143] Tom Jackman, "New Orleans police pioneer new way to stop misconduct, remove 'blue wall of silence'," *The Washington Post*, January 24, 2019, https://www.washingtonpost.com/crime-law/2019/01/24/new-orleans-police-pioneer-new-way-stop-misconduct-remove-blue-wall-silence/. ("Citizen complaints have dropped significantly, from 850 in 2016 to 734 in both 2017 and 2018, they said.")

success in the field.[144] Several agencies have taken steps to adopt a similar program, and command staff from nearly 100 police departments (including Austin Police Department) have traveled to New Orleans to learn more about EPIC.

Building on EPIC, the NOPD and the Innovative Policing Department developed another training resource called Project ABLE (Active Bystandership for Law Enforcement) that "prepare officers to successfully intervene to prevent harm and to create a law enforcement culture that supports peer intervention."[145] Project ABLE offers training, technical assistance, and research available at no cost for all departments in the nation to teach the importance of and allow for the facilitation of officer intervention. Several large departments, including Baltimore (pursuant to a federal consent decree), Philadelphia, Boston, and the WSCJTC are already participating.[146] The ABLE training is now being offered in over 100 police agencies across the country and will become part of the state-mandated training for all police agencies in New Jersey.

It is important to note that, while these programs have shown promise and are anecdotally effective, they have not been empirically examined. While they are based on strong conceptual frameworks, it is unknown if they achieve their intended effects of: (1) changing police culture, and (2) reducing excessive use of force or other problematic behaviors.

Implicit Bias Training

Implicit bias refers to an unconscious prejudice that people may develop due to differential life experiences.[147] In contrast to explicit bias, which is akin to traditional "racism," all humans are subject to some form of unconscious bias that may influence perceptions and behaviors, resulting in discriminatory decision-making.[148] The "automatic association people make between groups of people and stereotypes about those groups," is a well-studied psychological phenomenon.[149] [150] Long noted as a barrier to fair policing, implicit bias provides one potential explanation for the well-documented racial and ethnic disparities that exist across a range of policing outcomes, including traffic and pedestrian stops, arrests, and use of force across the country.[151]

Due to the high rates of minority citizen contact with police, the impact of implicit bias in policing could be especially profound. Indeed, the existence of implicit bias in officers specifically has been demonstrated in research.[152] The Task Force on 21st Century Policing specifically acknowledged implicit bias and its role in producing disparities in outcomes, calling for police training to reduce the impact of such biases. Based

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[144] http://epic.nola.gov/home/

[145] "Active Bystandership for Law Enforcement (ABLE)," *Active Bystandership for Law Enforcement (ABLE),* https://www.law.georgetown.edu/innovative-policing-program/active-bystandership-for-law-enforcement/.

[146] "Police Departments Across Country Embrace Active Bystandership to Prevent Harm," *Business Wire*, September 29, 2020, https://www.businesswire.com/news/home/20200929005159/en/Police-Departments-Across-Country-Embrace-Active-Bystandership-to-Prevent-Harm.

[147] Patricia Devine, "Stereotypes and Prejudice: Their Automatic and Controlled Components," *Journal of Personality and Social Psychology*, 82, no. 1 (1989): 62, https://doi.org/10.1037//0022-3514.56.1.5.

[148] John F. Dovidio, Kerry Kawakami, and Samuel L. Gaertner, "Implicit and Explicit Prejudice and Interracial Interaction," *Journal of Personality and Social Psychology*, 82, no. 1 (2002): pp. 62-68, https://doi.org/10.1037/0022-3514.82.1.62.

[149] "Implicit Bias," *Truth & Justice*, https://trustandjustice.org/resources/intervention/implicit-bias.

[150] Kirsten Weir, "Policing in Black & White," *American Psychological Association*, December 2016, https://www.apa.org/monitor/2016/12/cover-policing.

[151] Lorie A. Fridell, *Producing Bias-Free Policing: A Science-based Approach* (New York, NY: Springer, 2017).

[152] Keith B. Payne, "Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon," *Journal of Personality and Social Psychology*, 81, no. 2 (2001): 181, https://doi.org/10.1037/0022-3514.81.2.181.

upon a large body of psychological research demonstrating that biases can be managed,[153] [154] interventions typically begin by educating individuals regarding the existence of implicit bias and, subsequently, teaching various skills to reduce and manage these biases.[155]

Despite the accumulating evidence from other disciplines demonstrating a mixed picture regarding the impact of implicit bias training on changes in behavior,[156] [157] there remains a critical need to examine implicit bias training for police. One literature review conducted in 2018 found no experimental evaluations of implicit bias training for police officers.[158]

Since this review, only one study—involving the New York City Police Department (NYPD)—has been conducted that specifically examines the impact of an implicit bias training program (Fair and Impartial Policing) on police attitudes and behavior. Using a randomized control trial design, these researchers found increases in officers' reported knowledge about implicit bias, and modest changes in officers' attitudes that correlated with training delivery.[159] For example, 70 percent of participants gained a better understanding of implicit bias, while more than two-thirds learned new strategies that they expected to apply to their work.[160] Moreover, new psychological research has shown promising avenues to reduce implicit bias, including the facilitation of intergroup contact and displaying counter-stereotypic exemplars.[161] However, the NYPD study demonstrated no detectable changes in reported racial and ethnic disparities in stops, frisks, searches, use of force, arrests, summons, or citizen complaints after the training was implemented.

Based on the lack of research on the effectiveness of implicit bias training, the CCJ concluded: (1) additional research is needed to determine whether implicit bias training programs that differ in content and dosage yield better results, and (2) lowering the frequency of high-discretion police stops may be more likely to reduce biased policing than offering implicit bias training.[162] Of note, however, is that the CCJ did not consider the potential (unknown) positive impact that implicit bias training may have on changing the culture of policing. Increasing trainees' general knowledge and understanding regarding implicit bias should remain an important goal of police academies, especially to support the transformation from a stress-oriented to resiliency-based approach, and its corresponding impact on academy culture.

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[153] Margo J. Monteith, Steven A. Arthur, and Sara M. Flynn, "Self-regulation and Bias," *Group Processes & Intergroup Relations*, 13, no. 2 (2010): pp. 183-200, https://doi.org/10.1177/1368430209353633.

[154] Thomas F. Pettigrew and Linda R. Tropp, "Allport's Intergroup Contact Hypothesis: Its History and Influence," *On the Nature of Prejudice: Fifty Years After Allport* (2005): pp. 262-277, https://doi.org/10.1002/9780470773963.ch16.

[155] Fridell, "Producing Bias-free Policing".

[156] Patrick S. Forscher et al., "A Meta-analysis of Procedures to Change Implicit Measures," *Journal of Personality and Social Psychology*, 117, no. 3 (2019): pp. 522-559, https://doi.org/10.1037/pspa0000160.

[157] Doyin Atewologun, Tinu Cornish, and Fatima Tresh, "Unconscious Bias Training: An Assessment of the Evidence for Effectiveness" (Manchester United Kingdom: Equality and Human Rights Commission, 2018), https://www.equalityhumanrights.com/sites/default/files/research-report-113-unconcious-bais-training-an-assessment-of-the-evidence-for-effectiveness-pdf.pdf.

[158] Renee J. Mitchell and Lois James, "Addressing the Elephant in the Room: The Need to Evaluate Implicit Bias Training Effectiveness for Improving Fairness in Police Officer Decision-making," *Police Chief Magazine,* 2018, https://www.policechiefmagazine.org/addressing-the-elephant-in-the-room/.

[159] Robert Worden et al., "The Impacts of Implicit Bias Awareness Training in the NYPD" (International Association of Chiefs of Police/University of Cincinnati Center for Police Research and Policy, July 2020), https://www.theiacp.org/sites/default/files/2020-09/NYPD%20Implicit%20Bias%20Report.pdf.

[160] *Ibid.*

[161] Katherine B. Spencer, Amanda K. Charbonneau, and Jack Glaser, "Implicit Bias and Policing," *Social and Personality Psychology Compass* 10, no. 1 (2016): 50-63, https://doi.org/10.1111/spc3.12210.

[162] Center for Criminal Justice, "Effectiveness of Police Training".

Officer Wellness

Academies often stress the importance of maintaining proper physical health through fitness training and proper nutrition. Physical fitness can reduce an officer's risk of injury in the line of duty and can allow officers to perform their jobs more effectively. As a result, many departments impose strict requirements for physical fitness in the academy. However, just as important to an officer's safety and effectiveness in their job is their overall wellness and mental health. Policing can take a significant toll on mental health: officers must remain vigilant while working long hours, they are often exposed to crisis and tragedy, and they frequently encounter verbal abuse and scrutiny. Officers are therefore likely to experience stress, anxiety, and other mental states. This can negatively affect their judgment under pressure and make it harder for them to connect with others, thereby reducing their effectiveness in serving the community.[163]

In addition, when stress from the job accumulates, it can lead officers to burnout, depression, and even suicide; officers are 2.4 times more likely to die by suicide than homicide, while they are almost twice as likely as the general public to experience suicidal ideations.[164] More departments are recognizing this and are beginning to develop programs in and outside the academy to address overall wellbeing, rather than just physical wellbeing. While doing so allows officers to be more effective at their jobs and keeps them safer, it also acknowledges that officers are not emotionless soldiers, but are ordinary human beings who deserve care and support in their jobs.

One particularly successful program is the San Diego Police Department's Wellness Unit, where a more comprehensive approach to wellness was developed in response to several tragic incidents involving mentally unstable officers. With the introduction of the Wellness Unit, officer-wellness services like peer support, psychologists, and stress management training were centralized, and a robust culture of wellness was created. The program attempts to normalize wellness services by training recruits early in the academy on emotional survival and providing accessible resources to all new officers. The unit also offers a two-day effective interactions training course and various workshops to respond to troubling emerging trends in wellness. A PERF review of the wellness program in 2017 found that 70 percent of officers in the program felt that the stigma associated with asking for help was decreasing, while 79 percent of officers said they would feel comfortable walking into the wellness center—good evidence that the program is successful in creating a culture of wellness.[165] [166]

Nationally, the Bureau of Justice Assistance (BJA) offers the *Officer Robert Wilson III Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability (VALOR) Initiative*, which provides training programs and resources to promote immediate and long-term officer safety, wellness, and resilience.[167] While they offer several different programs, the *Law Enforcement Agency and Resilience Training Program* has been subject to recent evaluation.[168] This three-day program aims to provide law enforcement personnel the resources needed to manage stress, overcome challenges and adversity, and

[163] Deborah L. Spence, et al., "Law Enforcement Mental Health and Wellness Act : Report to Congress" (Community Oriented Policing Services, 2019), 1, https://cops.usdoj.gov/pdf/2019AwardDocs/lemhwa/Report_to_Congress.pdf.

[164] Police Executive Research Forum, "Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department" (Police Executive Research Forum, 2018), 5, https://www.policeforum.org/assets/SanDiegoOSW.pdf.

[165] *Ibid.*

[166] For a more precise detail of the services offered and the steps taken to build the program, see the full report.

[167]Bureau of Justice Administration, "VALOR Officer Safety and Wellness Initiative," *Bureau of Justice Assistance, n.d.,* https://bja.ojp.gov/program/valor/overview#ugj9n.

[168] Hannah D. McManus, Nicholas Corsaro, and Robin Engel, "An Evaluation of the VALOR Law Enforcement Agency and Officer Resilience Training Program," *2020* (Submitted to the International Association of Chiefs of Police).

thrive in their professional and personal lives.[169] This training was evaluated at three police departments between 2018 and 2019, where researchers assessed attitudinal changes and perceived skill acquisition. Survey results suggested trainees were receptive and satisfied with the training, though there were limited statistically significant differences across trainees' self-reported resilience, mental health, and wellness. The authors noted several methodological limitations that precluded strong statements regarding the impact of the training program on law enforcement, indicating additional research was needed to assess training impact.[170]

Psychological Skills

Though police academies provide some training for psychological skills, it is often undervalued as compared to physical skills. Effectively navigating high-stress situations in which an officer might need to use force requires intense psychological training. According to a paper on new directions in police academy training by several psychological, police, and academic experts, this not only involves proper cognitive skills like decision-making, impulse control, conscientiousness, and adaptability, but emotional, social, and moral skills as well.[171]

For training and assessing cognitive skills, many departments currently rely on performance in other training areas.[172] However, departments need to design specific and standardized courses to directly assess cognitive aptitude. In addition, developing a recruit's independent decision-making skills is often impeded by the paramilitary model, which tends to micromanage cadet training and inform them exactly what to do at all times.[173] Instead, embracing the adult-learning model by providing discussions in break-out groups and simulations of high-stress scenarios can be more effective.

More must also be done to address officer's emotional skills, as an officer's emotional knowledge greatly affects how effectively they perform on the job. To remain composed in high-stress situations requires the ability to regulate one's own emotions, as well as the ability to recognize emotions in others. Research has shown that police officers can be taught to improve their emotional regulation skills, as well as their emotional intelligence.[174] [175] Instituting comprehensive officer wellness programs is important to the development of these skills, as are teaching techniques like breathing and mindfulness, and encouraging physical fitness, sleep, and proper hygiene.[176]

To establish valuable relationships with members of the community, officers must have proper social skills. As with cognitive and emotional skills, social skills like social competence (communicating tactfully and respectfully with others), teamwork, and persuasiveness can be taught and strengthened through a reformed academy culture. As noted earlier, when instructors of the paramilitary model berate and talk down to cadets, this effectively teaches cadets to do the same to the people they eventually serve. By instead treating cadets respectfully and providing them with the opportunity to lead as individuals, a training

[169] https://www.theiacp.org/projects/law-enforcement-agency-and-officer-resilience-training-program

[170] Hannah McManus et al., "An Evaluation of the VALOR Law Enforcement Agency and Officer Resilience Training Program".

[171] Blumberg et al., "New Directions in Police Academy Training: A Call to Action".

[172] *Ibid*, 4.

[173] *Ibid*, 5.

[174] Matthias Berking, Caroline Meier, and Peggilee Wupperman, "Enhancing Emotion-Regulation Skills in Police Officers: Results of a Pilot Controlled Study," *Behavior Therapy,* 41, no. 3 (September 2010): 329-339, https://doi.org/10.1177/1748895814566288.

[175] Nicola Schutte, John Malouff, and Einar Thorsteinsson, "Increasing Emotional Intelligence Through Training: Current Status and Future Directions," *The International Journal of Emotional Education, 5, no.* 1, 56–72, https://psycnet.apa.org/record/2013-27507-005

[176] Blumberg et al., "New Directions in Police Academy Training: A Call to Action," 7.

culture like that of the WSCJTC can help foster respectful communication skills in all cadets. Additionally, academies can design training programs to boost skills like persuasiveness through scenario work.

Finally, since police work also carries extreme moral challenges, academies need to foster moral maturity and integrity. Building these skills can be achieved by exposing cadets to moral risks in the academy; during case studies and scenario-training, cadets should consistently be asked to discuss what they would do and explain why. Academies might also benefit from supporting spiritual and religious commitments of cadets (when applicable), which might further help in instilling moral skills.

The Peace Officer Psychological Screening Manual, produced by the California Commission on Peace Officer Standards and Training (POST), has been at the forefront of providing guidance on all phases and aspects of the psychological evaluation process and includes many of the listed recommendations.[177] The Commission continuously revises its recommendations based on American Psychological Association Research, and it offers evidence-based reasoning in support.

Conclusion

In summary, although few forms of police training have been subject to scientific review, scholarship in this area is growing. Some forms of police training, including de-escalation training and procedural justice training have received recent empirical evaluation.[178] [179] [180] These training programs have been correlated with several positive outcomes, such as reductions in use of force incidents, reductions in injuries, and increases in officer knowledge and skills. In contrast, training programs on implicit bias, peer intervention, officer wellness, and psychological skills have less evidence as to their efficacy but some of the initial findings are promising. While many of these types of programs have received some level of empirical evaluation, PERF found that, on average, officers do not spend a lot of time on these topics.[181]

Scholars note that police training is outdated and needs to include evidence-based, theory-informed curricula and delivery, which will ultimately improve learning and skill retention.[182] [183] A comprehensive review of the police training literature base has found that there is little evidence around police training modalities[184] and the existing literature is mostly hypothetical or based on other study populations. Despite these limitations, several of these studies point towards the utility of repeated content exposure and practice[185] [186] or booster programs.[187] The CCJ recommends that training content be delivered through a mixture of lecture, real-world video examples, scenario-based role playing, and group discussion.[188]

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[177] Shelly Spilberg and David Corey, "Peace Officer Psychological Screening Manual," *California Commission on Peace Officer Standards and Training*, 2014, https://post.ca.gov/portals/0/post_docs/publications/psychological-screening-manual/Peace_Officer_Psychological_Screening_Manual.pdf.

[178] Engel et al., "Examining the Impact of ICAT".

[179] Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey?".

[180] Nagin & Telep, "Procedural Justice and Legal Compliance".

[181] Police Executive Research Forum, "Critical Issues in Policing Series".

[182] Birzer, "The Theory of Andragogy Applied to Police Training".

[183] Mugford et al., "Improving Police Training From a Cognitive Load Perspective".

[184] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force".

[185] Kang, "Space Repetition Promotes Efficient and Effective Learning".

[186] Mugford et al., "Improving Police Training From a Cognitive Load Perspective".

[187] McLean et al., "Randomized Controlled Trial of Social Interaction Police Training".

[188] Center for Criminal Justice, "Effectiveness of Police Training".

We highlight the potential benefit of adopting resiliency-based training approaches as opposed to the traditionally taught, military-style training approaches. We contend that this approach enhances the ability of police academies to establish a guardian-centric culture that focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations.

Collectively the evidence suggests that police academies should reconsider the content and duration of training topics, along with their overall approaches for effective adult learning. Echoing the conclusions of the CCJ and many other experts in the field, we recommend a shift of the APD Training Academy away from a stress-oriented military style toward a resiliency-based approach supported by adult learning and student-centered instruction. Importantly, we encourage the APD to become an evidence-based learning organization, where changes in Academy training are rigorously tested and research findings are routinely shared with Academy staff and trainers to inform continual improvements in the curricula offered.

5 APD TRAINING ACADEMY – FINDINGS AND ANALYSIS

The Austin Police Department is the principal law enforcement agency serving Austin, Texas. With over 2,400 personnel, including approximately 1,800 sworn officers, and a budget of over $375 million, APD is the fourth largest police department in the state of Texas. With ten patrol divisions and more than three dozen specialized units, APD serves a city of just under one million people and a geographical jurisdiction that spans 296.2 square miles.

The APD Training Academy is a self-described "state-of-the-art training facility"[189] located in southeast Austin, near the Austin-Bergstrom International Airport. The Academy facility contains classrooms, workout facilities, a firearm range, and a driving track. Academy staff includes the Training and Recruiting Units, all of whom work from the Academy grounds. The facility is shared by APD, the Austin Fire Department, and Austin-Travis County Emergency Medical Services. All police cadets train at the Academy for the duration of the training period. Cadets do not reside at the Academy and training hours are typically Monday to Friday from 7:00 a.m. to 4:00 p.m., with occasional night and weekend sessions.

Cadets selected to attend the Training Academy are assigned to either a Regular or Modified Academy.

- The Regular Academy is currently a 32-week program for police officer candidates with no prior law enforcement experience (starting with the 144th cadet class, cadets in the Regular Academy will also participate in a two-week community immersion program prior to the start of Academy training). Upon graduation, newly appointed officers are placed into a 12-week Field Training Program with a certified Field Training Officer (FTO). After successful completion of the Field Training Program, the officer is assigned to a permanent patrol shift, reporting to a corporal and sergeant.
- The Modified Academy is an approximately 17-week program for candidates with prior law enforcement experience deemed sufficient to qualify for a shorter, modified training program. Upon graduation, newly appointed officers are placed into an 8-week Field Training Program with a certified FTO, after which they are assigned to a permanent patrol shift reporting to a corporal and sergeant.

Cadet training consists of a combination of Physical Training, Academics, and Skills Training, and cadets are taught through a combination of classroom-based learning, hands-on physical and partner training, and scenario-based and role play instruction. The Training Unit, which is responsible for all cadet training, is divided into three separate sub-units: Cadet Training, Learned Skills, and Continuing Education.

In assessing the Academy, we have focused on a number of key areas, including Academy diversity, culture, teaching methods, cultural competency training, community input and participation, professionalism, cadet injuries and roadblocks to graduation, crisis intervention training, de-escalation and use-of-force training, the Field Training Officer program, and other issues of importance. Although the primary emphasis of our review has been on the readiness of the planned 144th cadet class in light of the City's stated objectives, we have also focused on the long-term potential for developing a transformational, best-in-class police training academy.

[189] https://www.apdrecruiting.org/academy

KROLL

KEY FINDINGS

Based on interviews conducted and documents and other sources reviewed, Kroll makes the following key findings and observations concerning the areas highlighted below:

5.1 Academy Diversity

Leadership. Academy leadership and supervisory staff currently reflect a significantly improved level of gender, racial, and ethnic diversity than in years past.

- The ten APD personnel who make up the ranks of Academy supervisory staff in the Cadet Training Unit (Commander to Corporal) as of March 15, 2021, include three females (Commander, Lieutenant of Cadet Training, and Sergeant of Learned Skills), two African American males (Sergeant of Cadet Training and Corporal of Learned Skills), and one Latino male (Sergeant of Cadet Training). Two of the female supervisors are also of Asian/Pacific Islander descent.
- Similarly, the Recruiting Unit supervisory staff presently consists of five APD personnel from Commander to Sergeant, including two females (Commander and Sergeant of Recruiting) and two African American males (Lieutenant of Recruiting and Sergeant of Recruiting II). The Recruiting Unit also includes significant racial and gender diversity at the officer and civilian ranks. Of the 18 officers assigned to the Recruiting Unit, seven are female, six are African American, and three are Hispanic (there are currently no Asian officers in the Recruiting Unit).

Training Unit. Overall, the Training Unit at the Academy shows the following gender and demographic breakdown as of March 15, 2021:

	# Personnel by Unit	Training Units by Ethnicity [1]							Training Units by Gender [1]	
		White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Cadet Training	15	53.3%	13.3%	6.7%	20.0%	-	6.7%	-	73.3%	26.7%
Learned Skills	17	52.9%	23.5%	17.6%	5.9%	-	-	-	94.1%	5.9%
E-Learning	3	100.0%	-	-	-	-	-	-	100.0%	-
Advanced Education/CE	11	54.5%	45.5%	-	-	-	-	-	100.0%	-
All Training Units	46	56.5%	23.9%	8.7%	8.7%	-	2.2%	-	89.1%	10.9%

NOTE: [1] Based on 03/15/2021 Roster compiled by APD HR.

- Although Academy instructors overall are less diverse, at the officer ranks within the Academy there is more diversity than had been the case historically. For example, the 14 instructors assigned to the Cadet Training Unit include two females (one of whom is Hispanic), three Asian or Pacific Islander males, and a Hispanic male. Although there are currently no Black male or female instructors, the Lieutenant in charge of the unit recently looked into applicant pools for instructor positions and discovered that, within the past approximately five to six years, not a single Black male or female officer had applied for a vacant instructor position. Since hiring a Black male sergeant, the Cadet Training Unit has begun more affirmatively addressing the lack of racial diversity within the unit. As a result, the Cadet Training Unit has since seen an increased number of African American applicants and, with a recent vacancy posting for three positions, the unit is actively working to recruit African American and other diverse candidates for these positions.

- The Learned Skills Unit instructors consist of 14 men and no women (although there is one female supervisor, as noted above), of which eight are white, two Black, and four Hispanic.
- The instructors and supervisors in the Advanced Education and E-learning units are entirely male, of which nine are white and four Hispanic (plus one Hispanic male with a temporary assignment).
    - Leadership is well aware of the need to further increase racial, gender and ethnic diversity among the ranks of Academy instructors, and APD claims to be actively in the process of recruiting diverse officers to fill the ranks of current vacancies.
    - There seem to be a variety of reasons why the Academy has had difficulty increasing diversity among its pool of instructors, including financial disincentives (a loss of overtime and shift differential pay), physical fitness requirements, and a perception that instructor positions lack prestige or a pathway to promotion. Kroll notes, however, that other professional benefits counter these perceived disincentives, including better work schedules, additional training opportunities, access to Academy exercise facilities, and the satisfaction of teaching future officers.[190]
    - Although APD's Chief of Police has the authority to unilaterally order transfers to the Academy in an attempt to increase diversity, the former Chief was reluctant to do so. Nevertheless, this is an additional tool in the Chief's toolbox that can be deployed if needed to enhance instructor diversity. For example, when the Boston Police Department faced a shortage of diverse investigators in their homicide unit several years ago, the department actively recruited candidates of color to apply for open positions and, when recruited officers expressed reluctance to make a change due to the intensity of the work and the quality of life that their current job assignment provided them, the Chief affirmatively ordered temporary transfers for the betterment of the department with the understanding that the officers could transfer back at the end of a year.

Recruiting Unit. The Recruiting Unit as a whole contains the following gender and demographic breakdown:

	# Personnel by Unit	Recruiting Units by Ethnicity [1]							Recruiting Units by Gender [1]	
		White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Recruiting Teams 1 & 2	18	50.0%	16.7%	33.3%	-	-	-	-	61.1%	38.9%
Explorers/PAL	5	20.0%	40.0%	20.0%	20.0%	-	-	-	100.0%	-
All Recruiting Units	23	43.5%	21.7%	30.4%	4.3%	-	-	-	69.6%	30.4%

NOTE: [1] Based on 03/15/2021 Roster compiled by APD HR.

- Overall, the Recruiting Unit contains a diverse team of recruiters and background investigators and has developed a broad and effective outreach program that extends to other cities and states targeting historically black colleges and universities, Latinx organizations, women, and military veterans, among others.

Diversity of Planned 144th Cadet Class. The list of eligible cadet candidates who are currently expected to attend the 144th cadet class consists of one of the most diverse classes in recent APD history, as reflected

[190] See APD Training Academy Curriculum Review, page 4 (discussing Instructor Surveys) (June 19, 2020).

in the below charts (updated 3/31/2021).[191] As noted, there are currently 77 candidates that have been approved (down from 95 candidates as of December 10, 2020, due to attrition caused by the delay in re-starting the Academy). An additional 15 candidates have made it to Stage 2 testing. If those candidates are all approved, there will be a total of 92 cadets in the 144th cadet class. The below charts show the ethnic and gender make up of these two pools of cadet candidates. The first chart shows the total numbers and the second chart shows the percentage breakdown:

		Academy Class 144 by Ethnicity [1]					Class 144 by Gender [1]	
	# Candidates by Group	White	Hispanic or Latino	Black or African American	Asian / Islander	Other	M	F
Hired Candidates	77	33	27	11	3	3	65	12
Scheduled for Stage 2 Testing	15	5	6	4	-	-	9	6
All Candidates	92	38	33	15	3	3	74	18

NOTE: [1] Based on "*144th demographics.docx*" provided 03/31/2021.

		Academy Class 144 by Ethnicity [1]					Class 144 by Gender [1]	
	# Candidates by Group	White	Hispanic or Latino	Black or African American	Asian / Islander	Other	M	F
Hired Candidates	77	42.9%	35.1%	14.3%	3.9%	3.9%	84.4%	15.6%
Scheduled for Stage 2 Testing	15	33.3%	40.0%	26.7%	-	-	60.0%	40.0%
All Candidates	92	41.3%	35.9%	16.3%	3.3%	3.3%	80.4%	19.6%

NOTE: [1] Based on "*144th demographics.docx*" provided 03/31/2021.

- By comparison, the 143rd cadet class, which graduated 42 cadets in October 2020, was 50% white, 33% Hispanic, 12% Black, and 2% Asian. The percentages as to race and ethnicity (though not gender) for both the 143rd cadet class and planned 144th cadet class compares somewhat favorably to the 2019 census estimates, which show Austin as 48% white, 34% Hispanic, 8% Black, and 7% Asian. Note that the 143rd cadet class originally had 57 cadets, of which 15 did not graduate.

Anti-Racism Training. There are recent indications that APD leadership is making an intentional effort to enhance knowledge and understanding of racial equity issues. Within the past year, APD leadership attended two anti-racism workshops to address and better understand issues of systemic and institutional racism within the department. For example, in February 2020, Academy leadership and cadet instructors attended *Beyond Diversity: Courageous Conversations About Race*, led by Dr. Glenn Singleton. In September 2020, 18 APD leaders attended a two-day "Groundwater Analysis of Racial Inequities" workshop led by Joyce James Consulting LLC. By all accounts, both seminars were well received, with some talk among APD leadership of possibly incorporating one of these workshops into cadet training or annual training for Academy instructors.

[191] Data and classifications provided by APD.

- These workshops are designed to address larger issues of race and society, including issues of systemic and institutional racism. Police departments across the country struggle with accepting that their enforcement actions disparately impact communities of color. When speaking to Academy staff and APD personnel, Kroll heard frequently that APD does not make decisions based on race or ethnicity. Officers who are ethical and moral believe they would never intentionally discriminate or racially profile a subject. Getting officers to understand how long-standing systems of policing and society disparately impact communities of color can help establish a foundation to change police culture and positively impact community-police relationships.

Women's Mentorship Program. In 2019, the Academy developed a mentorship program for female cadets to help prepare and guide them through the Academy. The program was started by a female lieutenant after learning that the percentage of female officers employed at APD (approximately 10%) was less than the national average (13% overall and 17% for larger agencies), and that the female attrition rate at APD was also significantly above the national average, according to her research. The mentoring program, which was adopted as part of APD's 140th cadet class, attempted to provide support to female cadets by assigning them female officer mentors within the department. The goal was to provide guidance, encouragement, and assistance to female cadets as they navigated the various complexities they might face in the academy. Despite high hopes, the initial mentoring program was not successful at reducing female attrition. Of the 17 women who began the 140th Academy class, only four graduated.

The lieutenant who started the program teamed with an academic researcher to conduct additional research into the program and to obtain feedback from the program participants. Based in part on this feedback, adjustments were made to the mentoring program to address some of the concerns regarding potential conflicts in cadets reporting complaints about the Academy to their mentors, who might be perceived as having certain obligations pursuant to APD's chain of command, particularly if they were part of Academy staff. Assigning female officers within the department who do not work at the Academy as mentors generally mitigates this concern.

Overall, despite some conflicting information from former cadets, the feedback from cadets and mentors who have participated in the mentoring programs has been largely positive. Many female cadets have found that having a mentor within the department provides someone with whom they could address the stresses and anxieties associated with the training program, particularly as a female cadet, such as the physical component of training and the male-dominated instruction.

There currently are no other formal mentoring programs within the department. Developing additional mentoring programs for all cadets who believe they could benefit from having a mentor while in the Academy could help relieve some of the stresses all cadets inevitably face in the training environment and could prove particularly valuable to cadets of color. While cadets typically bond with their classmates, another classmate may not be able to help or provide appropriate guidance to a fellow cadet experiencing an issue or concern, as they are learning right along with their fellow cadets. But being able to confidentially consult with another officer in the department who has already experienced what the cadet has experienced may help put the cadet at ease knowing there is someone he or she can turn to for potential guidance.

LGBTQ+ Training. The Academy appears to do a good job of training cadets on LGBTQ issues, with two hours each of course content devoted to policing and transgender issues taught by an openly transgender instructor, and an introduction to LGBTQ issues traditionally taught by Sergeant Michael Crumrine, the president of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement.

- The transgender course occasionally includes a guest speaker to discuss transgender issues from a parental standpoint. The speaker is the parent of a transgender daughter and the head of security and operations at a local community college. He is relatable to cadets and provides powerful testimony from a father that helps build empathy and understanding on transgender issues and the prejudices and stresses confronting transgender individuals.
- That said, the Academy needs to do a better job of incorporating awareness of LGBTQ issues into tactical training taught in the Learned Skills Unit. For example, we were informed that Learned Skills does not teach cadets how to properly search Transgender individuals (they only teach male/female searches). What are respectful ways to approach it? What questions should officers ask of transgender subjects? How can the Academy properly equip cadets for respectfully handling these sensitive issues when confronted with them on the streets? Many Learned Skills instructors have traditionally been uncomfortable with transgender issues, but this needs to change if the department is to be a truly community-oriented police agency. Officers need to be trained tactically and properly prepared for all sorts of scenarios they will eventually face. APD will not gain community trust if officers are not perceived as empathetic to all communities in Austin, and they need just as much training in these areas as in tactics and procedure.
- Moreover, on a department-wide basis, the APD needs to improve training and educating officers in how to treat the LGBTQ+ community with dignity and respect. While cadets who have graduated from the Academy within the past six to seven years have received excellent training on transgender and LGBTQ issues, this training has not been pushed out to the department as a whole. Consequently, officers who graduated from the Academy more than seven years ago—including the "Fifth Floor" leadership at APD—have not received any department-sanctioned training on understanding the unique issues associated with the LGBTQ+ community,[192] such as the heightened threat of violence faced by LGBTQ+ individuals; the LGBTQ+ community's historical reluctance to report matters to the police; understanding present-day and historical relations between law enforcement and LGBTQ+ communities in the United States and the challenges and barriers faced by LGBTQ+ crime victims; the protocols for police interactions with LGBTQ+ individuals during searches, arrests and booking procedures, recordkeeping and report writing; and ensuring appropriate, lawful and safe treatment of LGBTQ+ suspects and detainees, and necessary medical care.
    - Some areas of particular note in which the department has lacked adequate training include: properly reporting the name, pronouns, and gender of individuals who are transgender, non-binary, or gender non-conforming; familiarizing officers with intimate partner violence involving LGBTQ+ individuals and how to assess incidents that are appropriate for same-sex relationships or those that involve trans partners; and being sensitive to the unique reporting barriers and challenges in the LGBTQ+ community, including fears of being marginalized, outed, abused, or ridiculed as a transgender or non-gender conforming person. It is imperative that all APD personnel receive comprehensive training about LGBTQ+ individuals and communities, including history, culture, contributions, challenges, and needs. Effective training will offer practical guidance for improving police-citizen interactions with LGBTQ+ individuals.

[192] The term "LGBTQ+" refers to the broad group of people who do not conform to traditional expectations with respect to gender or sexual orientation, including lesbian, gay, bisexual, transgender/non-binary, and queer individuals, as well as those who are intersex, two-spirit, asexual, and many others.

Overview of APD Online Recruiting Materials

The Austin Police Department's official online recruitment outlets include its Facebook, Twitter, Instagram, and YouTube accounts, as well as its website, https://www.apdrecruiting.org/. An overview of these outlets, including a description and analysis of their contents, is provided below.

Facebook
The official Facebook account of APD Recruiting is @JoinAPD and includes videos, photos, and written posts. There are 38 videos posted to the page, including short outlines of four specialized units (Air Support Unit, Patrol K9 Unit, Bomb Squad, and Lake Patrol), informational presentations on the application and hiring processes, and miscellaneous videos showing workouts, promos, media features, and officer testimonials. Several hundred photos have been uploaded, including officer profiles, police-community interactions, and informational posters. One or two posts are added each week, including additional photos and information about recruitment events and the application process.

Many of the posted videos include diverse voices and depict a fun but disciplined academy environment. The presentations, interviews, and specialized units' videos also provide important and transparent information on the Academy. However, the Patrol K9 and Air Support Unit videos display the paramilitary and warrior side of policing, as they include clips of high action and sometimes aggressive policing sequences. While this is surely representative of part of the job, as a recruiting tool, it may attract candidates interested more in fighting criminals than serving or protecting the community. Additionally, all officers interviewed in these specialized unit videos were white males, suggesting a lack of diversity in these units.

The majority of posts and photos on the Facebook page spotlight positive police and community interactions and promote a police department dedicated to serving the community. For instance, there are posts showing officers attending community events, visiting young students, and walking with and listening to protesters following the murder of George Floyd. In addition, the department appears to have made a concerted effort to promote diversity in officer profiles, including the active recruitment of women. The page was created in 2009, and while early posts highlight weapons and use of force training, an overemphasis of which might also re-enforce the warrior mentality, in recent years these posts have become infrequent. The department should continue to highlight diversity and effective community policing on this page, but care should be taken to ensure that the department's actions, policies, and culture match those espoused in its public recruitment efforts.

Other Social Media
The recruiting team's Twitter and Instagram pages are both @JoinAPD, and feature much the same content as its Facebook page. While Twitter posts are slightly more frequent than Facebook posts, they likewise include officer profiles, event promotions, and examples of community interactions. All of the Instagram photos are included on the Facebook page. The YouTube account ("Austin Police Department Recruiting Unit") and most of its videos are a subset of those on the Facebook page. In addition, the YouTube page shares videos from ATXN and other news networks featuring interviews and spotlights of women in the APD, as well as several episodes of a four-part series on the Austin Explorers, which follows two Austin youth in a four-week program designed to highlight career opportunities in law enforcement. While these videos show diverse youth developing communication and leadership skills, the program adopts a paramilitary model. The page also includes a video from the Austin Police YouTube account overviewing the department and its efforts to build trust in the community, as well as a six-minute recruiting video shared by ATXN espousing the values of integrity, accountability, respect, and ethics within the department.

Website
The APD Recruiting Website provides prospective applicants with information about APD and its training academy. Under "The APD" tab, the website offers a brief overview of the department's merits and benefits, displays officer testimonials, and describes APD's commitment to the community beyond policing. Additionally, there is a page displaying testimonials specifically from women in the department, and a page describing the department's inclusion and appreciation of military veterans. Under the "Careers" tab, the website describes the application process, prospective pay and benefits, and several of the possible career paths for APD officers. The "Academy" tab contains a brief description of the regular academy and the modified academy, as well as a more detailed description of the components for cadet training. The website also offers a waiting list to participate in APD's Officer Ride-Along Program prior to applying. Additionally, there is a page dedicated to promoting the city of Austin, as well as an FAQ and Contact page.

LGBTQ+ Recruiting. The Academy's current efforts to recruit in the LGBTQ community include setting up a recruiting booth at the Austin Pride festival, highlighting the work of APD's LGBTQ officers, staffing the recruiting team with officers from the LGBTQ community, and adapting the hiring process to meet the current needs of the LGBTQ community (for example, Stage 1 testing in APD's hiring cycles allows for transgender applicants to test with the gender they identify as during the physical fitness assessments). The department also participates in the Pride parade and displays a picture of former Chief Manley marching in the Pride parade on the APD recruiting website page. APD recruiters are also encouraged to

seek out opportunities and generate ideas to market to the LGBTQ community, including working with the APD Office of Community Liaison LGBTQ representative and the Lesbian and Gay Police Officer's Association. In the past, members of APD have collaborated with the Trevor Project to produce a video aimed at preventing suicide among LGBTQ teens and publicly celebrated the transition of a transgender officer within APD.

Despite these efforts, the belief among openly gay officers we spoke with was that the department needs to be more proactive in recruiting LGBTQ candidates. Some examples of things the department does not currently do that would improve its outreach and recruiting in the LGBTQ community include partnering with Out Youth Austin, an organization that allows youths of all sexual orientations and gender identities a place where they are acknowledged and accepted for who they are; actively engaging with the Gay-Straight Alliance and queer-identified organizations on college campuses; and recruiting LGBTQ+ service members who want to stay in public service after they serve.

- In addition, the hiring standards of the department are perceived as somewhat antiquated, which further inhibits efforts to recruit members of the LGBTQ+ community. These standards and other aspects of the APD recruiting program will be a major focus of the next phase of Kroll's review.
- Moreover, although there is a civilian liaison to the LQBTQ+ community, supplementing that position with a sworn officer to serve in that function would help recruiting efforts.

5.2 Academy Culture

The culture of a police training academy reflects the culture of a department and impacts the mindset and approach to policing that newly sworn officers adopt upon graduation. How cadets are treated, how they are expected to act, what explicit and implicit messages are communicated to cadets – all of these things impact the type of police officer a training academy is trying to mold prior to sending him or her out into the community. While not everything about policing can be taught at the Academy, the physical and classroom components taught there are the primary formative experiences of each cadet before becoming a sworn officer.

In conducting this assessment, Kroll solicited a wide array of insight, experiences, and observations concerning APD Academy culture, and we received widely disparate views about the validity of the way things have traditionally been done within APD. We have therefore divided this section into two sub-sections. First, we provide a mostly critical view of Academy culture and training that was provided by several former cadets from the 137th and 140th cadet classes, supplemented by input from some recent graduates of the 143rd cadet class. However, because many of the negative aspects highlighted by the former cadets—which were supported by corroborating evidence and were consistent with the descriptions of past training practices as described by many current APD officials—have been modified within the past two years or so, we also provide a more up-to-date overview of Academy culture as it presently exists.

5.2.1 Academy Culture – A Critical View

Academy Culture as Described by Former Cadets. Kroll conducted detailed and comprehensive interviews of six former APD cadets from the 137th and 140th cadet classes. The statements and information provided by these former cadets were corroborated by personal documentation, including medical records, emails, text messages, Workman's Compensation Records, and, in one instance, a telephone recording between a cadet's father and an APD official.

Four of the cadets interviewed were enrolled in the 137th cadet class (May 2017 - December 2017), while two of the former cadets were enrolled in the 140th cadet class (October 2018 - May 2019). As indicated in the below chart, all of the cadets were separated from the Academy for physical training-related injuries.

Class #	Race	Gender	Official Reason for Separation	APD Separation Status
137	W	M	Failed Fight Day (3 attempts)	Involuntary*
137	B	F	Not physically ready / returning from light duty	Voluntary
137	W	F	Problems with family, police culture and fear of guns; injury to upper extremities during Fight Day	Voluntary
137	W	M	Injured during Fight Day (fractured rib)	Voluntary
140	W	F	Stress Reaction Training - not physically prepared	Voluntary
140	H	F	Stress Reaction Training - not physically prepared	Voluntary

*APD documentation lists this cadet as leaving for involuntary reasons; however, the cadet reported that he was coerced into signing a separation form indicating that he chose to leave voluntarily.

Although each of the cadets signed a separation form indicating that they voluntarily resigned from the Academy, they each claim they were essentially coerced into signing the forms when presented with the choice of voluntarily resigning or being terminated involuntarily. When cadets are terminated, they are prevented from ever again working in law enforcement in the State of Texas. Faced with this decision, most cadets resign voluntarily to avoid losing the ability to apply to other police departments in the state. This process was described sardonically by an APD official as a "voluntary-involuntary resignation" and also noted in the report on Racial Inequities and Institutional Racism by Joyce James LLC (2020), at page 20: "Certain cadets are targeted and pressured relentlessly, then asked to resign or be fired. In the latter case, they would likely be banned from future law enforcement jobs in the whole state."

Many of the former cadets interviewed became visibly emotional when answering questions, and it was readily apparent that all of the cadets were serious applicants who exerted significant effort and made personal sacrifices—such as leaving their prior employment and relocating their families—in the hope of becoming sworn members of the APD. The findings and themes of these interviews are summarized below.

General Training Experiences

"Warrior" Culture. Each of the former cadets interviewed said that their Academy class taught the "warrior mentality" from the moment training began. They called the environment "toxic," "abusive," and "combative." They felt that the methods used to teach embraced "intimidation tactics." Instructors frequently yelled and cursed at the cadets. Cadets were punished in "smoke sessions" – i.e., physical punishment exercises designed to punish the entire class for one or more cadets' "mistakes." The cadets felt that the instructors lacked empathy and did not care about their well-being, which they believed would create police officers who were indifferent to the community.

Selective ridicule. Instructors chose specific people to relentlessly ridicule and mock, which occurred mostly during outside physical training and smoke sessions. Some of the cadets noted that those selected to be ridiculed tended to be minorities, females, smaller-statured cadets, older cadets (late 20s and older), and anyone who was perceived as unable to keep up with other cadets during a specific training session or who did not conform to a rule (stated or unstated). There appeared to be a particular bias against female cadets, which seemed to correspond to fewer females graduating. The bias exhibited by the instructors was

primarily driven by the perception that particular cadets could not meet the required physical fitness expectations needed to become an APD officer.

Bias-based instruction. Although the cadets found the course work challenging, some Academy instructors implicitly taught their students to be biased in enforcing the law. For example, the instructors discussed crime-fighting examples and showed films/video that frequently incorporated persons experiencing homelessness, minorities, and sex workers. The instructors made comments suggesting that cadets should target these groups on slow nights, implicitly suggesting that these population subgroups were a societal nuisance and basically worthless. One cadet reported: *"A firearms instructor asked us to routinely pick out someone out of a crowd. It could be at the grocery store, a game, he threw a few scenarios out there for us. He said pick that person and ask yourself, "How would I kill that person?"*

As a result, some of the cadets perceived that the bias was inherently a part of Academy culture and that instructors were indoctrinated into that culture. According to the cadets interviewed, while APD "talked a good game" about being inclusive, in reality, they perpetuated exclusion. One cadet noted that, while *"on day one of training, one of the instructors stated if you have bias, you cannot bring it to work,"* it sounded as if the instructor had read from a rule book and it was not subsequently reinforced.[193]

Anti-community bias. Two cadets recalled a female sergeant coming into their class asking the cadets why they wanted to be police officers. Before soliciting an answer to the question, the sergeant stated, *"You better not tell me it is because you want to help people, or I will punch you in the fucking face."* The message absorbed by the cadets was that the Austin community was the enemy, and there was little emphasis on genuine community engagement. (Academy leadership has indicated that this incident involved a guest instructor who was subsequently admonished by APD).

Cadet Resources/Assistance. Most of the former cadets interviewed stated that there was no one to speak to about the problems they faced. When one cadet asked why he failed Defensive Tactics, he received no response. He heard indirectly that one had to take a certain number of hits to pass. Kroll notes that the inability of cadets to ask questions or challenge an action taken against them is consistent with the findings noted in the Racial Inequities and Analysis report of Joyce James Consulting, LLC (2020).

Training Academy Equipment/Facilities. In general, the former cadets interviewed did not feel that the equipment or facilities were biased toward one gender or race. However, one cadet stated *"There was a lot of waiting for bathroom breaks and the person in the bathroom had to be fast. There was not enough time to take off the equipment and go to the restroom; not enough privacy to change clothes – we had to change next to a car in the parking lot. If carpooled, you would be next to several people, men and women. Half-naked next to each other next to vehicles."*

Separations/Resignations. All the former cadets interviewed believed they were essentially coerced into resigning because they were expressly told that, if they did not "voluntarily" resign, they would be involuntarily dismissed or terminated and could never work in law enforcement again. Although APD records indicate that one of these former cadets left "involuntarily" after he was badly injured during defensive tactics, he told Kroll that he eventually signed a form indicating he left voluntarily (it is unclear if this is a mistake in APD documentation).

[193] *Diversity*. Although the former cadets differed as to the degree of diversity within their respective classes, most reported that their class was more diverse when it started than at graduation, with graduating classes consisting of a higher proportion of white males than at the start of Academy. The instructors also lacked diversity in these cadet classes, with only one female and a small number of Hispanic instructors mixed among a large number of white male instructors.

Physical Training Experiences

Several former cadets interviewed, from both the 137th and 140th cadet classes, reported that Stress Reaction Training (SRT) and Defensive Tactics (DT) training was physically and emotionally abusive. The below summaries are approximate, or near-verbatim statements of these cadets as reflected in Kroll's notes of interviews:

A cadet from the 137th cadet class reported:

> *On day two, we were doing SRT (Stress Reaction Testing). The instructor yelled, "Anyone who is last [running] in getting back here will not get a drink of water." I pushed as hard as I could and hurt something in my leg. I thought I dislocated my hip, but I had sprained my hip muscle. He sent me to the ambulance; there were already two other cadets there who were dehydrated. They went to the hospital. One instructor followed them. I had an x-ray. The medical examiner told me, in front of the Academy instructor, I would need Physical Therapy to address the injury for at least 6 weeks. APD placed me on light duty. I was required to go to class at the Academy, but no physical training. I was on crutches.*
>
> *One instructor said, in a threatening manner, something to the effect, "Wait until you get back out there." I felt guilt and sadness that I could not participate. I also felt that the instructor was intimidating me about my return to imply it would be worse than I could imagine.*
>
> *Once I was back on regular duty, I was forced to do physical training immediately without any time after recovering from my injury to work back in training shape. I could not do it and ultimately passed out on day three of my return to full training.*
>
> *I was laying on the floor semi-conscious when I was surrounded by instructors and a sergeant. The sergeant said, "You can't catch up." I said, "I can". When I realized this was not just a head game, I said "Okay, I will leave." The sergeant said "good" and gave me the papers to sign and I was asked to leave.*

A cadet from the 140th cadet class, who resigned after the first SRT session, reported:

> *On the first day, in full uniform with boots and body armor, I fell behind in the first run. They said derogatory things about my weight. The cadets had to hold water bottles in t-position or overhead without moving for a period of time. They were repeating, "Why are you here? You are not going to make it so why don't you run to your car." They said I had my shoe untied and I was overweight. They had three water breaks in two hours and cadets were required to ask for water. They were prohibited from touching anyone during the drill, but I was grabbed three times [by instructors] during physical drills – I did not find it helpful. I was pulled out of the group and told to face the group. I saw people in heat distress. That is when I decided I had to get out. I did not feel like they were attending to cadets in distress or caring to see if everyone was ok. Ambulances were on the premises but too far away. It was hot, it was dangerous.*
>
> *After we went from the fire tower back to the classroom, they asked if anyone wanted to leave. I left. Their own policy said you cannot do this drill more than 90 minutes, but they intended to do another 90 minutes. They are very nice to those who are getting ready to leave. "Are you ok? Do you need water?" At that moment we heard over the radio that "someone passed out." I heard several people (up to 9) had serious injuries, heatstroke, etc. that first day.*

I felt there was a lack of caring for the cadets.

A second cadet from the 140th cadet class reported:

> *At 2:30 pm on day one, they took us outside, fully clothed in full uniform with water bottles. We went to the track. The instructors said, "We will do pushups and squats." A lot of yelling and directing (you cannot drink unless we tell you to). Run from one spot to the next and do pushups and squats. Stand and hold water bottles in both hands at a certain height and do not move. More running (and in boots). "No looking at each other, no checking on each other, no talking to each other."*
>
> *Run again. Run again. We went to the Concrete Fire Burn Building. More squats, pushups, continued yelling. Some personal insults toward women's physical fitness. Called out one male using derogatory comments about him failing a previous class. Embarrassing specific cadets. Then we had to climb the tower stairs.*
>
> *The instructors got a brush truck and started spraying the cadets with water. It is not painful, but it was just embarrassing. Then, we had to run back to the classroom at around 4:30 exhausted and soaking wet.*

Two former cadets from the 140th cadet class, one male and one female, remained in the Academy through a portion of DT training, which was informally referred to as "Combat Training" and "Fight Day." This aspect of DT training occurred without any explanation or preparation. The below accounts were reported to Kroll with strong displays of emotion by the cadets we spoke with.

A female cadet from the 140th cadet class reported:

> *First day of defensive tactics, two people at a time were told to run around the track two times, then perform exercises like sit-ups and pushups until exhaustion, then go to the gym/ring, put on boxing gear and be ready to hit the instructors; we were specifically told to "hit the instructors, but not below the belt." There was no pre-drill preparation or training. When in the ring, I got hit by the instructor multiple times, and then was hit hard enough so I flew out the ring. I was told, "You must get back in the ring and keep fighting." I received a labral tear. I was told I was "small" and would have to just deal with it. I did not resign until firearm instruction, because during firearm instruction I had eye inflammation, an abdominal strain, and the labral tear, so shooting hurt more than I could bear. So, I resigned.*

A male cadet from the 140th cadet class reported:

> *During DT week, I was very nervous because cadets already did not look "right" to me. One cadet had a bloody bruise on the inside of his thigh, another cadet had an injury, but people were not allowed to discuss DT. I had no professional training to fight. DT was going to be held in a separate building. The cadets waited for an hour. The Instructor came in and looked everyone over. The instructor said, "We are going to see who can fight and can't. Put your handgrips on and get your bags ready." Then, two additional officers came in. They said this is your last chance to use the restroom. The cadets were told to line up against the wall. I did not even know how to wrap my hands; I did the best I could. They then put us in groups by size. We ran across the track multiple times. Then we separated into groups and were told to do exercises, pushups, sit-ups; if you looked like you were slacking, you were told to do more. They played loud music. The instructors called us into the gym to put on headgear and a mouthguard. There were "three makeshift boxing rings."*

The instructors told the cadets to hit a static object (heavy bag?). An instructor told me to hit the object harder. A plainclothes officer told me to go into the ring right now. The instructors were hollering and cursing at me. The instructor said, "No headshots, no groin shots." No questions were permitted. I went into the ring and into my corner. Then the [tall] officer started taunting me – "You gonna hit me, you gonna hit me?" The instructor hit me "with such force that my mouthguard almost fell out, I was trying to get it back in, then I got hit so hard I fell out of the ring."

I was told to get on my feet and go to a room. I felt like I had been knocked out and I was confused. I was told to sit down and not to talk in a closet with an officer who was also in that closet. A second cadet was sitting next to me "with no color in his face and he was acting confused."

After this round in the ring, I was told to go back to the track and run. I only recall being yelled at and being given orders. I was then told to go back to the gym, put the gear back on and hit the static object, and then to get back in the ring. They also had a large video camera in my face the whole time. When I went back into the ring, I was told not to hit the instructor's groin or head. The officer hit me in the kidney.

At that point, I thought I failed DT. I heard screaming: "Don't quit, keep fighting." I was hit harder, and I lost my breath. I was put back in that small room, closet, and prohibited from talking. After about 15 minutes, an officer came in and asked me if I was ok, and said, "If you need to quit, quit now." The instructor said, "You almost made it." He said you can keep going including the track, the exercises, hitting the object and getting back in the ring. I did not want to quit so I repeated the cycle and got back in the ring. This last time, a different officer hit me. I heard a cracking sound, and I was again hit out of the ring. The instructor told me, "You can't make it and you don't deserve to be here." He said, "Go to the fucking wall" (and the f-word is used constantly). Two officers came in and instructed me to follow them. I was given no medical evaluation and no water. I grabbed my stomach and vomited into the trash can. I saw blood. Another officer came in and told me that I did not pass the exercise. I said, "No sir, I do not understand." The officer replied, "You will sign these papers. We are going to do this the easy way or the hard way. If you do not sign these papers, you will not come back here or work in any other police department anywhere. You are injured, you obviously cannot continue." I attempted to argue: "I passed everything, what did I fail? There is no objective, no training." The officer replied, "If you do not sign it, we will terminate you." I signed the resignation document. They escorted me out.

After I resigned, I went to the hospital. I was evaluated and it was determined I had soft tissue damage. Some APD officers came to my home to interview me later that day. My significant other refused them entry into our home. I later learned (through word of mouth), that cadets needed to be able to take a specific number of hits to pass DT; you had to have a certain amount of endurance; it was a rite of passage.

In addition, although Kroll did not interview him, another former APD cadet who attended the 140th cadet class, filed a lawsuit against the APD on September 8, 2020.[194] The lawsuit alleged that eight cadets became ill during SRT drills before the plaintiff, who was allegedly incoherent and unable to walk, required

[194] KXAN Staff, "Former Austin police cadet sues department after being hospitalized during training," *KXAN Austin*, September 2020, https://www.kxan.com/news/local/austin/former-austin-police-cadet-sues-department-after-being-hospitalized-during-training/. (Wise v. Manley, Case Number D-1-GN-20-004731. Filed: 9/8/2020).

medical attention. The complaint further alleged that several cadets required emergency treatment because of heat and hydration issues that were caused, in part, by instructors' refusal to permit cadets unrestricted access to water. The complaint alleged that the plaintiff spent 30 days in the hospital and amassed over $300,000 in medical expenses.

As the above statements and information suggest, the experiences of these former cadets paint a negative portrait of Academy culture and training that reflect poorly on how cadets were treated. The messages taught by such training tactics arguably bear little correlation to preparing cadets for policing as guardians of the community in a 21st century urban environment.

According to the former cadets interviewed, the physically abusive component of Academy training – at least in the 137th and 140th cadet classes – was excessive and led to many cadet injuries. As one cadet stated, *"The instructors had my future in their hands. Why didn't they teach self-defense tactics before they commenced beating on me? I know there is a limit on the amount of force that is acceptable in a training scenario and it was far exceeded."* The experiences of these cadets suggest that the physical and psychological abuse of SRT and DT exercises (leading to dehydration, exhaustion, muscle cramps/pulls, broken bones, injured soft tissue) was excessive and occurred before cadets were properly trained or prepared to participate in these intensive exercises. The lack of physical preparation, along with the inability of cadets to ask for help from peers and instructors when they were tired or hurting, led to a significant number of cadet injuries and, in many instances, permanent elimination from the Academy.

Kroll acknowledges that the above statements and information are limited to a half dozen or so former cadets and do not necessarily reflect the perceptions or experiences of many other cadets, successful and unsuccessful, who have graduated from the Academy during the past several years. Many APD officers we have interviewed over the past few months believe that the manner in which the Academy prepares cadets is necessary, and that the allegedly abusive practices noted above are essential to preparing cadets for contending with what can at times be a dangerous and pressure-filled job. These officers contend that, without an element of physical and psychological stress applied during training, officers will be unprepared for the many and varied stressful encounters they will inevitably confront, at the risk of public safety and officer safety. While some of the interviews confirmed aspects of SRT and Fight Day as described by the former cadets, others offered variations in the programs and described them as less abusive.

Academy Culture as Described by Recent Graduates. Kroll also interviewed four cadets[195] who went through the 143rd cadet class, which was greatly impacted by the COVID-19 pandemic. The Academy class was suspended on at least two occasions, as 83% of the cadets were at some point infected with COVID-19. This naturally caused heightened anxiety among cadets that training might be canceled, and partly as a result, Academy staff appeared to be particularly focused on retaining and graduating the cadets in that class.

Nevertheless, due to a combination of injuries, illness, and some failures, only 42 cadets (approximately 72%) of the original 58 candidates who entered the Academy graduated and, as noted above, at least two of those cadets will need to be recycled through the next Academy. Below is a summary of key topics explored during Kroll's interviews with these recently graduated cadets:

"Warrior" Culture. All the cadets/officers felt supported during the 143rd cadet class. They believed the Academy staff cared about their wellbeing and they perceived instructors as unbiased. However, one cadet said the instructors were inconsistent in their behavior and training, with some instructors acting like

[195] Kroll attempted to interview eight recent Academy graduates, though only four responded. Although all four of the cadets/officers interviewed were male, they were racially and ethnically diverse, and included one white, one Black, one Hispanic and one Asian officer.

mentors while others acted more military-like and formal. Moreover, some instructors appeared more engaged with the cadets than others.

According to one cadet, Academy instructors emphasized that, during potentially hostile encounters, it is important that cadets/officers learn to "fight and win." At no time was it suggested that potentially hostile encounters should result in a "win-win" with both the officer and citizen remaining unharmed.

Selective Ridicule. Although there was plenty of yelling, screaming, and cursing at cadets at various times during the Academy, these cadets did not perceive that any cadets were selectively ridiculed, and each responded differently to whatever harsh tactics were applied. Although some cadets were affected by it more than others, none of the officers felt that the screaming and cursing was excessive, and each believed it was to be expected in a police training academy.

Biased-based instruction. These cadets perceived the 143rd cadet class as diverse in terms of race, ethnicity, and gender, with no obvious drop-off among minorities or females upon graduation. However, one cadet felt there was insufficient Black representation in the class. None of these cadets perceived any instructor bias and each found their bias training informative, although one cadet noted that "it was a little confusing."

One cadet, who is now a sworn officer, perceived some anti-female bias among some of his cadet class and suggested that the selection process may not capture biases such as misogyny. He also thought that, in the Academy and in the field after graduation, Black police officers are sometimes held to a different standard (e.g., their mistakes are less likely to be overlooked as compared to white officers). While this cadet observed some peer biases, he did not feel it was substantial or widespread.

Community bias. Each of the graduating cadets said the Academy provided a balanced perspective on when to apply protective versus warrior styles in policing. These cadets said they learned a great deal about community relations and population subgroups, including the LGBQT+, Spanish-speaking, deaf, and mentally impaired communities. They believed the Academy taught the need to care for and understand the community, and to be equally fair towards all population subgroups. However, one newly sworn officer noted that, due to high call volumes, it is difficult to implement the community relations training they were provided at the Academy, due to lack of time.

Cadet Resources/Assistance. The cadets felt supported by Academy staff. For example, a Peer Support Sergeant spoke to the cadets several times and the Employee Assistance Program (EAP) staff spoke to their class during the first few days of the Academy. The cadets felt they could discuss their problems and that there were people to speak to if needed.

Physical Training. Some of the role plays were physically intense; one cadet described them as potentially excessive and "overly aggressive" and one cadet we interviewed was badly injured during the final role play. APD allowed this cadet to graduate and be assigned to light duty on the condition that, once cleared by medical staff, he would need to complete the final role play, which he subsequently failed. The cadet believed he failed because "he was forgotten about when on light duty assignment" and not physically rehabilitated to prepare him for the physicality of the final role play. Nevertheless, APD has since rehired this cadet, who will be recycled into the next Academy class.

Another cadet reported that Defensive Tactics exercises preceded any actual defensive skills training. He believed cadets should have received more skills training before DT, stating, "If you go to hitting a heavy bag without training, it will lead to broken hands and wrists." This cadet was injured during DT, although he acknowledged that he may have simply exacerbated a prior injury.

Use of Force Training. The 143rd cadet class included significant emphasis on emotional control, verbal and tactical de-escalation techniques, including Crisis Intervention Team (CIT) training and Integrating Communications Assessment and Tactics (ICAT), two modern approaches to use-of-force situations that are consistent with best practices. One cadet thought that more "hands-on" training might further reduce the likelihood of escalation in use-of-force situations on the street. When the cadets were asked if they received any instruction in the classroom or on the range concerning when it would be appropriate to point a firearm at a person, we received inconsistent responses (e.g., two cadets said they received "no training," although one said he may have heard something about a "fourth amendment seizure", while two cadets were not sure if this issue was ever covered).

5.2.2 Academy Culture Today

Paramilitary model. The Training Academy remains a predominantly paramilitary training model, albeit with a greater emphasis than in years past on a classroom-based, learning-institute style of teaching.

- Although most Academy leaders describe the Academy as a "hybrid" model closely associated with a paramilitary model but tampered with a mix of adult learning courses, the reports of Dr. Villanueva and Dr. Ferguson, and interviews of Academy supervisors and instructors, suggest the paramilitary model continues to predominate.
- Three frequently cited examples of the Academy's transition away from a paramilitary format include: First, the Academy has eliminated the requirement that cadets "make a hole" whenever an instructor or supervisor walks through the hallway (cadets were formerly required to stand at attention against the wall so that senior personnel could get through). Now, cadets are encouraged to extend a handshake, introduce themselves, and engage in conversation. Second, cadets are no longer required to wear camouflage, military-style attire as the uniform of the day in Academy. Third, there are fewer one-on-one, in-your-face stress actions (yelling and screaming), which are now more group focused.
- Cadet surveys administered by Dr. Ferguson after the 141st and 142nd cadet classes suggested that most courses continue to be taught in a highly formalistic and stress-based manner, with cadets yelled at, berated, and degraded by instructors in certain classes. Moreover, according to Academy instructors and supervisors with whom Kroll spoke, the Academy has continued to impose behavioral modification exercises (i.e., group calisthenics and exercise drills at the sandpit) as collective discipline for cadet mistakes and compliance failures.
- The report of the Community Video Review Panel (CVRP), released on January 18, 2021, also highlighted concerns regarding the Academy's culture as reflected in many of the Academy's training videos. A few of these concerns are highlighted in the below excerpts:

  > *The us-versus-them bias was explicit in some of the videos--i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:*
  >
  > - *An enhanced focus on officer safety over the safety of the community as a whole,*
  > - *A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"*
  > - *An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and*

- *Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.*

. . . .

We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.[196]

APD's Rationale. APD leadership has expressed its belief to Kroll that some aspects of a paramilitary structure are an essential component of police culture and paramount to ensuring cadets are attuned to the chain of command and know what to do and how to respond in crisis situations. Indeed, the majority of APD and Academy leadership we spoke with questioned the suggestion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a "warrior" mindset, which leads to an "us vs. them" mentality of officers on the front lines fighting crime. Academy leadership and instructors we spoke with presented the view that, while it is important to emphasize the community-oriented skills of policing, the Academy must nevertheless instill in cadets the importance of following a strict chain of command and following orders in crisis situations. They further contend that this frequently requires the imposition of physical and psychological stress so that cadets are not faced with such high-stress situations for the first time while on the streets as sworn officers.

We agree that police officers can find themselves in life-threatening situations at a moment's notice and need to deploy swiftly and effectively to address a threat in the community. Human beings often like to take their time and weigh options and outcomes before acting. Police work sometimes does not give officers that opportunity. There are times when orders need to be communicated clearly and quickly about how to respond.

That said, a Gallup poll in the summer of 2020 reported that confidence in the police had fallen to 48 percent, which was the first time in the 27 years Gallup has tracked this issue that such a low level of public confidence in policing was recorded.[197] Clearly, the customers of policing are unhappy with the product police departments are selling; reforms are needed. If one thing is certain, it is that the community does not want a paramilitary training academy or a police department that employs stress-based, military-like tactics unless absolutely necessary.

There is a need to train officers for the job and tasks they will be required to perform. The majority of those tasks involve using empathy, tact, discretion, and integrity when communicating with citizens. Training that prepares officers for the limited number of outcomes that require them to utilize legitimately required military-like tactics, such as apprehending a terrorist bomber or addressing a sniper situation, should not dictate the foundation of a department's training program. Although Kroll believes in training officers to deal with real-world threats, which can include exercises that elevate a cadet's heart rate and induce the physical effects of being placed in fear and under stress, it is equally important to train officers for their everyday responsibilities and duties.

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[196] "Community Report: Austin City Council Resolution 66: Austin Police Department Training Video Review Panel" (January 18, 2021).

[197] Aimee Ortiz, "Confidence in Police is as Record Low, Gallup Survey Finds," *The New York Times,* August 2020, https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html

As noted in Section 4, police academies can establish a resiliency-based or guardian-centric culture which focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, however, resiliency-based training has been shown to have several positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression.[198] Strengthening cadets' critical decision-making skills, communication, and emotional intelligence skills is better associated with the skills and tactics necessary to handle the complex situations they are likely to face in the field. It is Kroll's opinion that this can occur without a paramilitary foundation.

"Warrior" vs. "Guardian". Although APD leadership dislikes the "warrior vs. guardian" terminology, the new Commander of the Academy said she believes APD should train its cadets to be "70% guardians and 30% warriors." "We are guardians, but we have to maintain a warrior mindset to stop immediate threats when they occur."

- As an example, the Commander suggested to consider an officer assigned to protect school children. The officer is there as a guardian, but if a school shooting occurs, the officer needs to be prepared to respond immediately, sometimes with military-style tactics pursuant to strict protocols and clear lines of authority. Although hopefully these tactics are rarely employed, officers need to be prepared to employ and execute such tactics in crisis situations, which can only be taught at the Academy.
- Other real-life examples include the attempted insurrection at the United States Capitol building on January 6, 2021. In situations like that, clear lines of authority are essential to ensure a safe and effective response to threats posed by violent mobs and criminals. As it happened, the U.S. Capitol Police as a unit was initially unprepared for the insurrectionary mob that charged the Capitol building that day. As a result, the chain of command broke down, resulting in the death of one officer and approximately 130 injuries.
- By contrast, on April 15, 2013, officers in Boston did not delay and deliberate over their response to the terrorist attack that occurred during the Boston Marathon. Command was quickly established, directions and orders were followed, and officers were deployed pursuant to a strict command structure. At a moment's notice, officers had to resort to tactics and procedures learned during their reality-based training exercises at the police academy, thereby saving dozens of lives.

The mere use of the terms "warrior" and "guardian" has led to increased tensions in policing. Community activists point to officers in tactical vehicles and SWAT uniforms performing tactical operations in an unnecessarily "militaristic" fashion. This criticism is justified when police departments deploy heavy-handed equipment and tactics unnecessarily, such as when SWAT teams execute no-knock search warrants for low-level offenders, or when the police arrive in full tactical gear to peaceful protests. Such aggressive tactics are overbearing and establish an unfortunate tone that police are looking for a confrontation. This dynamic in policing was first flagged as a potential concern as early as 1997, when a survey of all police departments serving cities of 50,000 people or more provided the first comprehensive national data on SWAT team deployments. Their findings documented a rise in the number of SWAT teams and the normalization of these units into mainstream policing.[199]

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[198] Rollin McCraty and Mike Atkinson, "Resilience Training Program Reduces Physiological and Psychological Stress in Police Officers," *Global Advances in Health and Medicine*, 1, no. 5 (2012): pp. 44-66.

[199] Peter B. Kraska and Victor B. Kappeler, "Militarizing American Police: The Rise and Normalization of Paramilitary Units," *Social Problems*, 44, No. 1 (1997): pp. 1-18, https://www.jstor.org/stable/3096870?seq=1.

Police departments counter that policing requires discipline, clear lines of authority, and asperity in dynamic and tense situations. Most officers do not agree with the perception that donning protective equipment and approaching potential life-threatening situations in vehicles designed to give them the best chance of protecting themselves, while ending a threat to the community quickly, is indicative of them waging war in the communities they serve. Certainly, no one would suggest that using an armored vehicle to approach the Austin bombing suspect was an unnecessary deployment of equipment. But the manner in which APD responded to summer protests in 2020 contributed to community perceptions of a tone-deaf department not responsive to community concerns.

In our conversations with APD personnel and the community, Kroll has found that both groups agree that officers should be professional caretakers—protecting people and serving the community respectfully and professionally. There is also agreement that, when faced with a dangerous situation in which officers are subjected to fear, anxiety, stress, and potential violence, officers must regulate their responses, apply a guardian-centric, resilient approach, and ensure that citizen interactions are conducted without bias.

Regardless of what terminology is employed, a department's training programs should be assessed on whether they prepare cadets in a resilience-based rather than stress-based approach to policing in an effort to develop resilient caretakers.

Elimination of Abusive Practices. Following the 141st cadet class, as a result of complaints from cadets and a series of cadet injuries that had occurred in several of the previous Academy classes, the Academy modified practices, such as "Fight Day" and Stress Reaction Testing (SRT), that had been deemed unnecessarily abusive. These modifications were made in an attempt to reduce cadet injuries, lower the rate of attrition (which disproportionately impacted females and cadets of color), and create an environment more conducive to success and graduation.

- "Fight Day" (subsequently "Will-to-Win") is part of defensive tactics training. Cadets initially run a lap around the track, after which they perform pushups and flutter kicks for approximately 4-5 minutes until called into the gymnasium, where they are required to jump rope. Cadets then don headgear and boxing gloves and punch a heavy bag for approximately two minutes. Three cadets are then selected to enter one of three boxing rings, where they each fight with a skilled and experienced instructor, who delivers a series of blows and punches at 40-50% intensity. The cadet is expected to fight continuously for three minutes and to perform through pain and exhaustion while continuing to fight. If the cadet stops fighting, the instructor continues to throw 40-50% intensity punches back at the cadet to encourage the cadet to fight back. Frequently, cadets have had no formal self-defense or hand-to-hand encounter training prior to this exercise.
- "SRT" or Stress Reaction Testing was modeled on military boot-stamp training and constituted a series of intense physical exercises combined with persistent yelling and screaming that occurred on day one or two of Academy and pushed cadets to their physical and psychological limits to see how they acted under extreme stress. The intent was to break down individual personalities and rebuild them as a unified team. This frequently resulted in several cadets dropping out and appeared to operate as a sort of hazing ritual to force out cadets who "could not take it."
- Following the 141st Academy class, "Fight Day" was changed to "Will-to-Win" and became more structured and controlled than in years past. However, although the name has changed, the essence of the exercise has not materially changed. It occurs prior to cadets being taught any self-defense or other hand-to-hand defensive tactics, which places them at a distinct, and arguably unrealistic disadvantage against skilled and experienced sparring instructors.

- APD believes it is essential that cadets who have not experienced being physically assaulted or punched before arriving at the Academy should experience this for the first time in an Academy-controlled environment, and not in a hostile situation while on patrol after graduation.
- Kroll notes, however, that APD personnel were unable to provide a persuasive rationale as to why such an exercise could not reasonably occur towards the end of Academy after cadets have received all essential defensive tactics training.[200]

- Two male staff members (an instructor and a supervisor) who were the most abusive during "Fight Day" (prior to the 142nd Academy class), especially to female cadets, have been removed from the Academy and replaced with more appropriate instructors. The Learned Skills Unit now has a highly regarded (within APD) female sergeant and African American corporal in supervisory roles.
- The Academy has eliminated SRT, which frequently resulted in injuries, dehydration, and forced resignations. Because Academy leadership determined that cadets were not being provided the tools to succeed and must be allowed to build physical capacity gradually, SRT was replaced with team-building exercises (TBX).
  - According to the lesson plan, the goal of TBX is "to create a physically and mentally stressful environment through exercise and problem solving," which "will serve as an important introduction to the importance of teamwork and the need for strong leadership in law enforcement" consistent with the "philosophy, values, vision, and mission of the Austin Police Department."
  - TBX occurs later in the Academy, which allows time to have cadets enhance their physical fitness levels before completing the team-building exercises. Although cadets are still placed under physical and psychological pressure to finish the tasks, TBX is a much-improved way to create the skills needed of officers to react under pressure while unifying individual personalities into a team without the humiliation and other components of military boot-camp training.
- The Academy has also eliminated a steep hill climb that was used for SRT and disciplinary purposes and which caused a lot of ankle injuries. This has been replaced by modified discipline that requires cadets to carry a 15 or 20-pound sandbag to classes for a day if they fail an exercise, as well as collective discipline (behavioral modification exercises) in which all cadets perform extra physical fitness drills when any one cadet fails (this occurs in the first trimester of the Academy as a way of demonstrating that one officer's mistake affects all officers).[201]

Officer Wellness. The Academy has attempted to provide transparent and effective support mechanisms for its cadets through several wellness-related services, including the following:

- In the first week of the Academy, Director of Officer Wellness, Rick Randall, provides overall information on the officer wellness programs.

[200] In interviews with civilians who had accompanied APD officers on ride-alongs, it was noted that one officer commented that, if a physical conflict were to occur, he was going to "win" the encounter. Statements such as these give the impression of a "warrior" mindset among APD patrol officers.

[201] These collective discipline sessions are sometimes referred to as "smoke sessions."

- At orientation, the Police Chief speaks about the importance of self-help and how to access department wellness services; the Commander gives the same information to family members who attend the academy orientation session with their loved ones.
- During weekly staff meetings, Academy leadership reviews the cadets' progress in major areas of academics, physical training, learned skills, and emotional well-being.
- In several documented instances, staff members have referred cadets experiencing coping issues, mental stress, or distress during the Academy to psychological services and the peer support unit.

5.3 Teaching Methods / Adult Learning

Adult Learning Methods. The reports completed by Dr. Villanueva in May 2020 and Dr. Ferguson in April 2021 affirmed the need for the Academy to better develop and incorporate adult learning theories into its curriculum and teaching methods and to move away from the rigid, formalistic, lecture-and-listen format that dominates many Academy classroom courses.[202]

- Although Academy instructors have been revising course content and lesson plans in preparation for the 144th cadet class, and submitting such content for supervisory review, until recently the primary focus has been on ensuring that all course content is compliant with the state-mandated Texas Commission on Law Enforcement (TCOLE) and Basic Peace Officer Certification (BPOC) requirements. Course revisions and updates were not directed at incorporating adult learning and other effective teaching strategies. Academy staff was awaiting guidance from Dr. Villanueva's replacement (see below).

Hiring of New Division Manager. On March 15, 2021, the Academy officially hired and onboarded Dr. Anne Kringen to replace Dr. Villanueva in her role as Organizational Development and Training Manager. Dr. Kringen most recently was Associate Professor of Criminal Justice at the University of New Haven. A police officer before she pursued her Ph.D. in Criminal Justice at Texas State University, her research interests are in Policing, Gender in the Criminal Justice System, Organizational Policy, and Criminal Justice Administration. In her published writings, Dr. Kringen has explored such topics as mental illness stigma and the limitations of crisis intervention, gender imbalances in policing, learning community policing through community engagement, the role of Civil Service Commissions on police diversity, and identifying barriers to Black applicants in police employment screening, among other topics.

- Dr. Kringen's official position at the Academy is Division Manager. On March 30, 2021, Interim Chief Joseph Chacon spoke with Academy staff and instructed them that Dr. Kringen has the same authority as Commander and that her instructions and recommendations must be complied with moving forward.
- One of Dr. Kringen's top priorities is to immediately work with instructors to ensure that (1) all lesson plans are updated, (2) content is current and corresponds appropriately to the objectives of the course, and (3) that adult learning and innovative teaching techniques are incorporated throughout Academy training.

[202] Dr. Ferguson's report specifically focused on course content for the following courses: Cultural Diversity, History of Policing, Professionalism and Ethics, Fair and Impartial Policing, Services for the Deaf and Hearing Impaired, Multiculturalism and Human Relations, Spanish, Transgender, LGBTQ, and Racial Profiling.

- On April 1, 2021, Dr. Kringen provided Kroll with an outline of her plan to work with instructors to update all course content consistent with the above three criteria. Once the content is sufficiently updated, she will review at least two lesson plans for each instructor to provide feedback and direction on conducting Phase Two reviews, which will ensure that:
    - Each lesson plan includes diversity, equity, and inclusion (DEI) content. Lesson plans that do not relate to DEI content must be verified by staff identified by the Division Manager.
    - Each lesson plan includes graphs or infographics that present ideas visually.
    - All PowerPoints comport to Ratcliffe's PowerPoint guidelines.[203]
    - Any material removed from PowerPoints is incorporated into handouts to be made available to cadets weekly, and that information included in both the handouts and the PowerPoints are consistent.
    - Each lesson plan includes assessments (graded or ungraded) for each learning objective.
    - Each lesson plan includes endnotes for content used to fulfill each learning objective (for each section) so content can be checked for accuracy and older content that should be updated can be identified easily. All TCOLE content is to be identified to indicate which content areas cannot be modified or deleted.
    - Each lesson plan includes at least one current event or local example that is relevant to each unit goal.
- Dr. Kringen will also be exploring Academy culture and helping to find the proper balance between academic-style learning, physical and tactical training, disciplinary measures, and chain-of-command structures.

Teaching Seminars. A majority of Academy instructors and supervisors attended two teaching seminars towards the end of 2020 that addressed how to more effectively present course content and teach in ways that enhance learning. In particular, Academy instructors and supervisors attended:

- A teaching symposium in December (co-led by Drs. Ferguson, Villanueva, and Sloan) that provided additional guidance on adult learning methods as applied to courses related to diversity, equity, and inclusion;[204] and
- A Transformational Training seminar led by a team of instructors at Command Presence (https://commandpresence.net/), a police instructional training firm. The 8-hour seminar provided ideas and methods for evidence-based teaching methods designed to counteract "death by Power Point" and other uninspiring teaching techniques. This was well-received by Academy staff, and the Academy plans to require this training annually for all Instructors.

Role Plays and Scenario-based Content. Academy instructors with whom Kroll spoke noted that many Academy courses already include a lot of scenario-based and role play content that effectively teaches cadets how to apply what they are learning. For example, de-escalation, criminal law, and critical incident training each include several role-play scenarios. Critical incident training examines scenarios involving bipolar disorders, emotional depression, intellectual disabilities, and paranoia and hypervigilance. De-escalation training, including verbal de-escalation techniques, as well as criminal law training, applies role

[203] https://www.jratcliffe.net/post/ten-basic-tips-for-powerpoint-presentations.

[204] According to Dr. Ferguson, although many instructors expressed openness to further transitioning to an adult learning environment, the feedback from the symposium was disappointing (survey results were mixed with only nine surveys completed).

plays to scenarios involving family disturbances, the "button pusher," an irate person in a civil dispute, the agitated driver, the passenger who tries to interfere with a driver arrest, and several others.

- While role playing is an important active learning technique, adult learning concepts involve more than simple role playing. The importance of updating the curriculum to incorporate modern and effective teaching methods that include open discussion, critical thinking, and active learning techniques is essential to overcome the passive lecture and listen techniques that have dominated a lot of Academy instruction in classroom-based classes.

Updated Instructor Job Descriptions. At the recommendation of Dr. Villanueva, the Academy recently revised Academy Instructor job descriptions to include appropriate expectations, duties, and responsibilities around teaching effectiveness. The revised job descriptions set forth the duties and responsibilities of Cadet Training and Learned Skills instructors, as well as Assistant Field Training Officers, including the need to model "professional behavior and communication," exhibit "appropriate behavior, language, demeanor, and dress," utilize "procedural justice practices, such as treating citizens with respect and decision making based on facts instead of biases, to achieve and maintain effective community policing," and maintain an "appropriate and professional classroom atmosphere and training environment to engage students and facilitate learning."

- The job descriptions have also tailored a comprehensive list of knowledge, skills, and abilities that each instructor must have to teach at the Academy, including the following:
    - Interest and commitment to teaching and learning
    - Knowledge of teaching strategies
    - Knowledge of adult learning theory
    - Ability to use a variety of instructional techniques, including lecture, assigned reading, group and individual assignments, conferences, debates, discussion groups, panels and seminars, simulations, case studies, and role play
    - Ability to communicate in ways that display empathy and understanding with other city employees and members of the community
    - Ability to apply emotional intelligence skills to understand and collaborate with members of the community to improve public safety, resolve issues, and build trusting relationships
    - Knowledge of effective community policing strategies and practices
    - Knowledge of the diverse cultural groups that make up Austin, Texas, and their unique concerns when it comes to law enforcement
    - Knowledge of appropriate techniques for deescalating situations and contacts
    - Skill in establishing and maintaining effective working relationships with the diverse cultural and social groups in Austin, Texas
    - Skill in appropriately utilizing listening and verbal abilities to maintain professionalism during difficult interactions with law enforcement

Scheduling in 40-hour blocks. The schedule for the 144th cadet class initially included large blocks of time devoted to such courses as Penal Code (40 hours in Week 3), Arrest Search and Seizure (40 hours in Week 5), and Traffic Code/Crash Investigation (40 hours in Week 7), which requires instructors (often the same instructor) to teach non-stop for much of that time, and cadets to absorb a huge amount of

information in a condensed period of time. Instructors lose some of their ability to effectively communicate as the time goes by. Cadets receive a large amount of new and technical information without time to effectively digest it. If they have concerns and need additional follow-up, there is no time to do so the next day or after class, as each day has a full load of new material to be presented.

Spreading out the courses with more frequent test taking could better enable cadets to learn from their mistakes and correct them when tested again on that information. Some students are sound oriented with the ability to hear an instructor present a lecture and retain it. Others are visually oriented and need to read the text, see videos, take notes, and review the learning to absorb the information. Large chunks of information are better distributed in shorter periods for a longer length of time. This would also provide instructors the ability to better address how the course fits into the overall mission of ethical policing and allow for more discussion by gradually building onto the foundation of the previous instruction.

An example could be learning in the morning session the law on when an officer can make a threshold inquiry pursuant to *Terry v. Ohio* based on reasonable suspicion. The next class could instruct recruits on how tactically to make such an approach along with when officers can conduct a frisk and when they cannot. This could be followed up with the rules and procedures of reporting a stop, coupled with appropriate report writing skills. Each instructor could build off the other. It would allow each instructor to weave in class discussions about professionalism, ethics, and integrity, and help ensure training is consistent with department and community values.

We understand that police training in the state of Texas comes under the purview of the Texas Commission on Law Enforcement (TCOLE), which sets the required minimum training an academy must cover so that cadets are eligible to take the state certification exam upon graduation. TCOLE recommends not only how the information should be presented and sets learning objectives for each course of instruction, but also recommends the sequence in which the course material should be taught. However, TCOLE allows academies to change the sequence, if necessary.

Kroll Interviewed the TCOLE leadership team, which explained that they recommend the order of instruction based on past success of that curriculum in preparing cadets to pass the TCOLE exam on their first attempt. When Kroll informed TCOLE of our suggestions for modifying the 40-hour blocks of course content at the Academy, TCOLE said it would have no concerns with changing the strict sequencing of instruction, but believed to effectively do so, some of the courses may require more time to present. TCOLE noted that, while it would need to make sure the manner of the presentation continued to meet all the course learning objectives, its evaluation of the Academy would continue to depend on the Academy's first-time pass rates on the state certification exam.

Use of Outside Content Experts. Kroll found that APD has historically been reluctant to incorporate a lot of community and civilian input into its training programs and many Academy instructors and supervisors are somewhat distrustful of non-police personnel (including academic experts) when it comes to advising on training methods. However, Academy leadership has expressed a willingness to work with outside academic content experts from local colleges and universities in appropriate courses, such as the History of Police and Race in America (see discussion below). Moreover, the new Division Manager is currently reviewing course content and meeting with instructors to determine which courses—particularly DEI-related courses—are most appropriate to be co-taught with an outside subject-matter expert. This will also be a consideration of the newly formed Academy Curriculum Review Committee, discussed below.

Academy Curriculum Review Committee. One of the initial priorities of Dr. Kringen as the new Division Manager is to establish an Academy Curriculum Review Committee (Committee), which will help evaluate the content of each DEI-related course at the Academy and determine, among other things, which courses

may benefit from subject-matter experts and other outside perspectives. The Committee will be comprised of Dr. Kringen (Division Manager), the Training Supervisor (once hired), selected members of Academy staff, two outside academic experts, and four community representatives. The staff members will include, in addition to Dr. Kringen and the new Training Supervisor, at least two instructors with specific knowledge of some of the key courses to be evaluated. The Committee will start by examining course content for the DEI-related courses of most concern to the community, as well as some of the Learned Skills content to ensure that DEI objectives are incorporated throughout the entire Academy training process.

Learning Management System. Academy leadership is currently in the process of selecting and purchasing an automated Learning Management System (LMS) to help facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure compliance with state-mandated TCOLE- and BPOC-requirements, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work, and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class. Once implemented, the LMS software will allow Academy staff to have a state-of-the-art, best-in-class curriculum planning tool.

- Kroll notes that APD is in the process of finalizing the selection of a vendor and procurement of such a system, with final implementation planned for October 2021.

5.4 Cultural Competency Training / DEI Content

Curriculum Review. Kroll examined the lesson plans, curricula, and teaching materials provided by Academy staff for each of the courses which broadly address issues pertaining to diversity, equity, and inclusion (DEI), as well as police-community relations and other matters that, broadly speaking, address cultural competency. Specifically, Kroll conducted a gap analysis of the below courses:

1. The History of Police and Race in America (newly added course)
2. The History of Policing (conventional course)
3. Cultural Diversity
4. Professionalism and Ethics
5. Fair and Impartial Policing
6. Multiculturalism and Human Relations
7. Interacting with Transgender Individuals
8. Law Enforcement and the LBGTQ+ Community
9. Racial Profiling (Biased Based Policing)
10. Law Enforcement Survival Spanish
11. Interacting with Individuals who are Deaf or Hard of Hearing
12. Traumatic and Acquired Brain Injuries

We also reviewed and considered the curriculum review report of Dr. Miguel Ferguson that was finalized and submitted on April 5, 2021. Kroll agrees with Dr. Ferguson's Level I and II recommendations, which have essentially been incorporated into our recommendations in Section 7.[205] Moreover, consistent with Dr. Ferguson's recommendations to incorporate more adult learning content throughout Academy training,

[205] Dr. Ferguson's Level III and IV recommendations are for the City's and APD's long-term considerations.

Kroll recommended as a short-term measure in our preliminary report of February 26, 2021, that the City of Austin immediately hire a replacement for the Organizational Development and Training Manager position to assist Academy staff in implementing and incorporating adult/active learning models throughout the identified DEI-related courses. The Academy filled this position on March 15, 2021, with the hiring of the Division Manager.

We provide a brief description and analysis of the DEI-related and cultural competency courses below.

The History of Police and Race in America

In an effort to provide historical context to community perceptions of the APD and policing generally, the Office of Police Oversight collaborated with the University of Texas School of Law to develop *The History of Police and Race in America,* an eight hour course that will be taught for the first time at the Academy during the 144th cadet class. The course was submitted to then-Chief Manley in March 2020 and subsequently endorsed by Dr. Villanueva, who believed that including the course in Academy training would ensure that "diverse perspectives are being presented when learning about police history in context."[206]

By tracing the history of policing from its colonial origins to modern times, the course illustrates how police agencies have historically subjugated racial and ethnic minorities in the United States, with a specific lens directed at Austin. The course curriculum is designed to inform cadets about the historical forces underlying modern perceptions of the police among communities of color, as well as help cadets better understand and empathize with the diverse communities they are called to serve.

The course is organized into five parts. First, students are asked to reflect on their own views of policing by exploring how their lived experiences and personal interactions with the police have shaped their views of policing. By noting these experiences on a handout and sharing them in small groups, students learn of the many ways in which views about policing become fixed in people's minds, and that such views differ depending upon one's experiences. Second, students participate in a short competitive activity in which one group is given a significant advantage over other groups. At the end of the activity, instructors explore with the students how it feels to compete with unequal resources. Third, instructors present a PowerPoint on the history of police in America, drawing a direct line between colonial slave patrols and mass incarceration today. The presentation examines the racist origins of formalized police departments in the United States generally and Texas specifically, and discusses the violence and injustice historically perpetrated against minorities, police involvement in lynching, the aggressive enforcement of Jim Crow Era Laws, and the over-incarceration of people of color. Cadets are exposed to the historical realities that influence how some community members continue to perceive the police today. Fourth, students are asked to actively engage with specific flash points that have created tensions between APD and the Austin community from post-reconstruction to modern times. Reading about these cases and answering critical questions pushes students to emotionally engage with and understand the troubling and violent role that the police played in each of these flash points. Finally, students are asked to reflect on the course by writing their thoughts and engaging in conversations about how they can use this information to change the narrative of policing moving forward.

Kroll believes that this course, which will be co-taught by a local academic subject matter expert[207] and an African American APD sergeant, and which fully embraces adult learning methods, is a valuable and

[206] APD Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020).

[207] At present, the Academy is in discussions with Dr. Courtney Robinson, an Adjunct Professor at Huston-Tillotson University and the Founder of the Excellence and Advancement Foundation in Austin, to co-teach this course. The Foundation uses innovative programming to address critical community needs and works to transform how communities combat the school to prison pipeline.

important addition to the Academy's curriculum that will help counter the perception that law enforcement is reluctant to address difficult and troubling facts about its past. By understanding the history that impacts community perceptions, cadets will be better prepared to deal with the complex realities of policing in a diverse urban environment, while better understanding how their presence and authority is sometimes perceived.

The History of Policing

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan for this course was last updated and approved by an Academy supervisor on October 30, 2019.

This course covers the historical development of police service models in the United States from 1900 through the present, including how the English system of law enforcement influenced policing in the United States. Students also learn about the evolution of policing in Texas.

Students learn that community policing is an APD organizational strategy that allows the police and community to work closely together to solve the problems of crime, including fear of crime, physical and social disorder, and neighborhood decay. Students also learn that community policing stresses exploring new ways to protect and enhance the lives of those who are most vulnerable: juveniles, the elderly, minorities, the poor, the disabled, and the homeless. This effort encourages the police and law-abiding people to work together with mutual respect and accountability.

The course also covers how APD currently engages the community through calls for service, directed patrols in high crime areas, addressing community quality-of-life issues (e.g., littering, excessive speeding areas, prostitution, etc.), the use of District Representatives that work exclusively in their assigned communities, Operation Blue Wave (community foot patrols), and such initiatives as "Coffee with a Cop."

Although the course content is fine for what it attempts to do, it should not be considered part of the overall DEI content of the Academy, as there is little emphasis in this course on issues pertaining to equity, race, ethnicity, and other DEI content. Those areas are more adequately covered in the above-noted course on History of Police and Race in America.

Dr. Ferguson has recommended that APD update the curriculum for this course and use content experts in its development. However, much of the updated content referenced by Dr. Ferguson is covered in The History of Police and Race in America (see above), which will be co-taught by a local subject matter expert. That course was prepared and developed by content experts at the University of Texas Law School. Accordingly, the History of Police and Race in America, which complies fully with Dr. Ferguson's recommendations, should replace the History of Policing as DEI-related training. The History of Policing can be taught as a traditional training course outside of the core DEI courses.

Cultural Diversity

This class is taught by a TCOLE-certified instructor and is scheduled for eight hours. The lesson plan was approved by an Academy supervisor on October 30, 2019. The previous lesson plan was prepared on July 7, 2010, and last revised on August 14, 2013 (according to APD documentation, there is no indication that this earlier lesson plan was reviewed and approved by an appropriate Academy supervisor). Although the current lesson plan contains some revisions and reformatting, it is otherwise nearly identical, based upon a side-by-side review with the 2013 version.

The purpose of this training is to increase cultural awareness and understanding and help cadets develop skills that will refine positive communication within a diverse community.

Kroll notes that the current lesson plan is not substantially different than the outdated version. For example, as with the lesson plan revised in 2013, the current lesson plan contains a reference list of articles on page

40 dating from 1996 to 2008. One of the listed references is to Multicultural Law Enforcement: Strategies for Peacekeeping in a Diverse Society (4th Edition 2008). However, since 2008, three additional editions of this book have been published, with the 7th Edition printed on January 31, 2018 that would likely contain references to more recent issues facing the law enforcement profession and the communities they serve.

The introduction section of the lesson plan contains unhelpful negativity in explaining the difficulty of interacting in a diverse community or organization. The course also presents as somewhat abstract, intellectual, and dry in several areas. If this course is shown in PowerPoint it would be particularly dry and not memorable for students. The content should be reviewed and revised to make it more engaging.

This lesson plan is essentially identical to the 2013 version with no updates included, except for some minor re-formatting and structural changes. We highlight a few sections below as an example (this is not an exhaustive list):

> **The Challenge of Diversity**: This section notes that dealing with diversity can be at times "insurmountable" and discusses abstractly the "Seven Underlying Principles of Diversity." We found this verbiage in the training negative and not conducive to a positive emphasis on diversity from an organizational perspective.
>
> **Lesson Objective 1.1**: To increase awareness of the various dimensions of diversity, this section is too abstract, dry, intellectualized, and impractical for students.
>
> **Lesson Objective 1.3**: Discuss the term "human diversity" – the list included under this section was limited to cultural, racial, and ethnic references and should be expanded to include such things as religious affiliation, gender, gender identity, sexual orientation, language, mental capabilities, marital status, socio-economic status, and disabilities.
>
> **Lesson Objective 1.4**: List "dimensions of diversity" – this section is too abstract, impractical, and not memorable for students.
>
> **Lesson Objective 1.11**: Describe the Concept of the Four Layers of Diversity – such abstract concepts are difficult to remember and not useful to improving future behavior.
>
> **Lesson Objective 2.9**: Describe the Cultural Orientation Model – this section is too abstract, impractical, and not memorable for students.

On a more positive note, the lesson plan does include several scenarios and problems/exercises that appear informative and useful with practical application.

We recommend that APD work with Dr. Kringen and outside subject matter experts to revise this course by making it more engaging and incorporating adult learning methods into the instruction. If necessary, the time allotment to facilitate the updated lesson plan should be expanded or adjusted as appropriate. Students need to understand the organizational case for diversity and learn to effectively interact in a diverse workforce and community.

In his curriculum review report, Dr. Ferguson reviewed the six-module online course offered by TCOLE. He opined that these modules of instruction are a case study in ineffective training and offered several reasons in the Summary section of his analysis on this topic. However, Dr. Ferguson's report does not address the Academy lesson plan (discussed above) that APD submitted to Kroll for review. As noted, we have identified gaps and weaknesses in the above lesson plan and recommended revisions to the training material.

Multiculturalism and Human Relations

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on March 11, 2021.

The course examines the definitions, key concepts, and origins of prejudice, and explores the differences between implicit bias, explicit bias, and stereotyping. Students learn that the role of the peace officer includes enforcing laws impartially and treating all persons equally, including criminal justice personnel, who are equally subject to the laws that apply to everyone else. Students also learn the importance of cross-cultural communications and that, in a multicultural society like the United States, police officers must understand how to facilitate dialogue and reduce conflict.

The course covers the power of the U.S Department of Justice to investigate and prosecute bias-motivated violence in which the perpetrator selects the victim due to his or her actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. The course also examines APD's policy on hate crimes, which includes the procedure for investigating and reporting hate crimes.

Although the purpose and intent of this course is important and essential to effective police training, APD's current lesson plan for this course has a negative overall connotation. Bias, discrimination, stereotyping, and prejudice need to be more deeply taught so that students learn to better manage their inherent biases.

The following sections should be reviewed and revised for the following reasons:

> **The Functions of Prejudice** section is incomplete. Bias is born of necessity. Students must understand why it is part of human interpretation of the surrounding world, how it can be identified, and how it can be managed. Willingness is a key requirement as well. When students are taught that bias is part of the human condition, they are more willing to manage it.
>
> **The Four Basic Feelings or Attitudes Harbored by Most Prejudiced Persons** section needs more context. This section should be presented and taught in a way so that biases can be managed and not be taught in a manner that suggests people who are prejudiced are inherently "bad."
>
> **Lesson Objective 4.1**: The purpose of this lesson is to have students discuss the value of, respect for, and sensitivity to the feelings and needs of others. However, the sub-section on "important skills that should be used" lists skills that should be considered or used by the student, but it provides no learning objectives on how students can develop these skills.
>
> **Section III. APPLICATION STAGE**: This section of the course allows students to discuss their personal racial/ethnic group and provide introspection by asking and answering a series of questions. We believe this exercise is flawed and in need of revision. Not all people hold beliefs about their racial/ethnic group; some are more individualistic, and some are aligned with different groups (e.g., on economic classifications).
>
> We recommend that APD work with the new Division Manager and subject matter experts outside of the Academy to revise the Multiculturalism and Human Relations course and incorporate adult learning methods into the instruction. The time allotment to facilitate the updated lesson plan needs to be expanded or adjusted as deemed appropriate. This course should ultimately help students identify and manage their own biases before they interact with the public as a member of the department.

Dr. Ferguson agrees with Kroll that this course curriculum and lesson plan needs revision. Kroll agrees with Dr. Ferguson that, once the DEI courses are updated, there will be opportunities to reduce redundancies across the courses, excluding occasions when instructors wish to reinforce a learning objective. Kroll recommends that Academy instructors, in consultation with the Division Manager, consider other ways to reinforce the learning objectives without using the same lesson plan verbiage or scenarios from other course materials. As Dr. Ferguson confirms, this course needs more adult learning incorporated into how the material is presented to cadets.

Professionalism and Ethics

This class is taught by a TCOLE-certified and Ethics train-the-trainer Instructor and is scheduled for ten hours of instruction. The lesson plan for this course was last updated and approved by the Academy on January 14, 2021.

This course teaches that the primary responsibility of law enforcement in general, and the individual officer in particular, is to protect the people of the United States through upholding and enforcing the law. Students discuss ethical dilemmas in law enforcement and explore ways to address difficult situations. Students will become familiar with civil and criminal laws that govern a peace officer's conduct, as well as civil penalties for sexual harassment and other inappropriate behavior.

Students learn that the community's perception of its police department is influenced by how open and accessible the agency is to handling citizen complaints and policing itself. The importance of police legitimacy and procedural justice is also reinforced, including the four pillars of (1) fairness and consistency, (2) giving voice to all parties, (3) transparency and openness to the process, and (4) impartiality and unbiased decision making.

Students will become familiar with the APD Law Enforcement Canons of Ethics that was adapted from the International Association of Chiefs of Police and APD General Orders (Kroll notes, however, that no APD General Orders are cited in this lesson plan).

The scenarios used in this course primarily include the following discussion topics:

1. Identify the ethical dilemma.
2. Discuss the difference in perceptions.
3. Discuss the possible personal consequences.
4. Discuss the possible professional consequences.

The lesson plan does not incorporate how the above four points link to relevant APD policies. It is important that students are trained on relevant APD policies that require them to intercede (which applies specifically to sworn officers) and to report violations of law or policy (which applies to all employees). The lesson plan only mentions the APD General Orders on one occasion (in parenthesis under the heading: "Law Enforcement Canons of Ethics"). This lesson plan should include relevant APD policies in the General Orders Manual under Section 200: Response to Resistance, and Section 900: General Conduct and Responsibilities. The revised lesson plan should also include instruction specifically relating to the following subsections:

> On November 12, 2020, APD issued *General Order 200.1.3: Duty to Intercede*, which states: "Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor." This new requirement is an active "Bystander" mandate for which every APD officer must receive training. This important training topic is not listed in this lesson plan.
>
> *Section 900, Sub-section 900.2: Required Reporting of Violations*. APD employees (civilian and sworn) have the responsibility to report criminal activity by other employees or any breach of APD written directives (policy). This policy outlines the protocol to report criminal conduct by written memorandum to APD Internal Affairs, APD Special Investigations Unit, or any supervisor in their chain of command. Additionally, employees are required to report any employee known to have violated an APD rule, regulation, or order to their immediate supervisor. This policy also mandates

what action the Supervisor shall take in accordance with General Order 902: Administrative Investigations.

Section 900, Sub-section 902.1: Confidentiality. All information relating to an employee's suspected criminal act or General Order violation is confidential with certain articulated exceptions.

Section 900, Sub-section 900.2.2: Retaliation Prohibited. Employees are prohibited from retaliation against any defendant, complainant, witness, victim, investigator, or in any other related capacity.

The policies mentioned above are vital in managing risk to the department and enforcing employee ethical responsibilities by requiring all APD employees to report misconduct, criminal and administrative. For those employees who fail to do so, there are levels of accountability built into the disciplinary process to correct and address this behavior (as noted, the Duty to Intercede policy applies only to sworn members of APD).

Kroll notes that APD is currently evaluating bystander training provided by Georgetown University, i.e., "Active Bystandership for Law Enforcement (ABLE) Project,"[208] to prepare officers to successfully intervene to prevent harm and create a law enforcement culture that supports peer intervention. APD is also considering the New Orleans Police Department EPIC[209] peer intervention program that teaches officers to successfully intervene and which establishes protections for those officers who intervene. We commend the department for examining these programs and urge APD to adopt one of them, consistent with best practices.

Dr. Ferguson agrees with Kroll that the curriculum and lesson plan for this course needs revision. Kroll identified several gaps in the training and agrees with Dr. Ferguson that content experts would be helpful in updating this course of instruction.[210]

Fair and Impartial Policing

This class is to be taught by a TCOLE-certified instructor who is also certified as a COPS (Office of Community Oriented Policing Services, U.S. Department of Justice) – Fair and Impartial Policing instructor. This course is scheduled for ten hours of instruction. The lesson plan was most recently updated and approved by the Academy on March 24, 2021.

The Academy included this training into its curriculum in 2017 after receiving training from COPS subject matter experts in October 2016. The training is designed for cadets, patrol officers, and first-line supervisors and includes an instructor's guide, recruit patrol curriculum and training resources, and supervisors' curriculum and training resources. The training covers implicit bias and cultural sensitivity. The training applies the modern science of bias to policing and attempts to give officers the information and skills they need to reduce and manage their implicit biases. The curriculum addresses not only racial and ethnic biases, but also biases based on gender, sexual orientation, religion, and socio-economic status.

The training reference materials include a Fair and Impartial Policing lesson plan, as well as the COPS lesson plan in accordance with the APD Lexipol (General Orders) Policy Manual. The goal of the course is to provide TCOLE mandated training to the entire department so that all sworn officers in APD enforce the law equally to everyone in the community.

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[208] Active Bystandership for Law Enforcement (ABLE) | Georgetown Law

[209] http://epic.nola.gov/home/

[210] Dr. Ferguson mentions in his report this is a twelve-hour block of instruction. The updated lesson plan provided to Kroll by APD indicates the course is allotted for ten hours of instruction.

Due to the proprietary nature of the COPS Fair and Impartial Policing curriculum, this course is required to be completed in its entirety using only the training materials provided pursuant to the COPS program. The materials reviewed appear to have been developed in 2013. Overall, as this curriculum/lesson plan was created by the COPS office subject matter experts, its basic content appears acceptable as an essential DEI-related course in the Academy.

Kroll notes, however, that the training curriculum for this course is proprietary to the COPS office and any training material in addition to what has been already provided may require authorization from the developer. Kroll recommends that Academy staff discuss Dr. Ferguson's Level I and II suggestions with the COPS office to determine how his course suggestions might be accommodated.

Interacting with Transgender Individuals

This two-hour class is taught by an APD officer who identifies as transgender and is a subject matter expert with personal experience engaging with the transgender community. The instructor developed this training and helped revise the APD's transgender policy with assistance from a transgender police officer in San Francisco. The lesson plan was last updated and approved by the Academy on January 22, 2021.

The course helps students understand what it means to be transgender and addresses some incorrect myths and stereotypes that surround the transgender community. Students learn the relevant terminology currently used in the transgender community and what words/terms may be outdated or offensive, especially as applied in the context of law enforcement and community policing.

Students are also taught best practices, such as APD's policy on community policing and searches regarding the transgender community and police interactions with members of the transgender community. Students also learn to identify when an attack on a transgender person may be a hate crime, as well as statistics on current discrimination practices and suicide rates among transgender individuals.

This course is an excellent introduction to issues involved with policing in the transgender community. Moreover, that it is taught by a subject-matter expert who happens also to be a police officer provides a positive impact on new cadets. However, this course should be provided on a department-wide basis so that it is not restricted to new cadets.

Kroll agrees with Dr. Ferguson's Level I and II recommendations to ensure this course includes current information and updated data and to incorporate the other active learning suggestions provided.

Law Enforcement and the LGBTQ+ Community

For the past several years, this class has been taught by Sergeant Michael Crumrine, the President of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement. Sgt. Crumrine is deeply knowledgeable about LGBTQ+ sexual and intimate partner violence investigations and has a solid understanding of the issues in cases involving LGBTQ+ victims and suspects. For the 144th cadet class, this course will be co-taught by Sgt. Crumrine and a female instructor who is also a subject-matter expert on LGBTQ issues and active in the LGBTQ community. Although this course was originally scheduled for three hours of instruction, it was recently reduced to a two-hour course. The lesson plan was last updated and approved by the Academy on January 6, 2021.

The course helps students incorporate some of the current, relevant terminology used in the LGBTQ community, especially as it applies to their role in law enforcement. The course covers some of the challenges faced by members of the LGBTQ community and addresses significant historical events that have shaped perceptions of law enforcement within the LGBTQ+ community. Consistent with what is also addressed in the transgender course noted above, the instructors will address what it means to be

transgender and how to respectfully interact with transgender individuals using preferred names and pronouns.

The course also addresses some of the unique barrier's that LGBTQ crime victims face when reporting to law enforcement, particularly concerning sexual assault crimes and intimate partner violence. Students are taught best practices when engaging victims to help overcome these barriers. Students are also taught some of the power and control tactics unique to LGBTQ+ sexual and intimate partner cases, as well as techniques they can utilize to help determine the aggressor in these cases.

Additionally, students are instructed on what constitutes sexual and intimate partner violence in the LGBTQ+ community, and the course examines some common myths and biases associated with violence in the LGBTQ+ community. Students are also educated on the neurobiology of trauma and how trauma can affect memory and recall in sexual and intimate partner violence cases.

This course is an excellent introduction to issues involved with policing in the LBGTQ community and a good supplement to the transgender course noted above. Moreover, that this course will be co-taught by two subject-matter police experts (male and female) is excellent. In future cadet classes, APD may wish to consider including an outside speaker from the LGBTQ community and potentially expanding the length of this course, especially in light of the robust LGBTQ community in Austin. This course also should be provided on a department-wide basis so that the content taught is not restricted to new cadets.

Kroll agrees with Dr. Ferguson's suggestions to update reference materials for this course where appropriate and to minimize redundancies with the Transgender course to increase time for active learning exercises (consistent with Kroll's short-term recommendation). Dr. Ferguson also suggests the addition of basic technology for use in the instruction.

Racial Profiling (Bias-based Policing)

This class is required to be taught by a TCOLE-certified Instructor with experience in the topic area and/or a subject matter expert. It is currently scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on December 11, 2020.

This course covers current departmental policies regarding racial profiling and includes a discussion of Supreme Court and other court decisions involving appropriate actions in traffic stops. Students are taught the legal definition of racial profiling and learn to identify the elements of both appropriate and inappropriate traffic stops. Students are specifically trained on APD *General Order 328: Racial or Biased Based Profiling Policy*, in its entirety.

Students also receive instruction on TCOLE's requirements on mandated department policy, data collection, and required training for new Chiefs of Police; however, these topics are not germane to the basic training requirements of police cadets, who need to become equipped to fairly and without bias enforce laws regarding police encounters with pedestrians and during traffic stops.

The core topics for racial profiling training should include, in addition to the relevant departmental policies and court decisions: (1) history of citizen complaints concerning racial profiling and the police training that initially led to this practice, (2) more behavior than just traffic stops -- including stop, question, frisk, and other proactivity, (3) a focus on search and seizure that specifically discusses the variations across race and ethnicity in the rates of all searches, consent searches, and seizures, and which highlights the behavioral components of suspicion that may be inaccurate and are not race-neutral. We recommend the Academy revise this lesson plan to include, at a minimum, the core topics noted above to ensure that students learn the information necessary to eliminate racial profiling as sworn officers in the field. For the

sake of efficiency and consistency, the Academy may want to consider linking the Racial Profiling core topics recommended into its Fair and Impartial Policing lesson plan.

Dr. Ferguson agrees with Kroll that this curriculum and lesson plan needs revision. Dr. Ferguson recommends the use of basic technology to help cadets learn. Kroll agrees with Dr. Ferguson's expertise in this area and suggests the Academy staff evaluate and consider this suggestion as part of the curriculum's revision.

Law Enforcement Survival Spanish

This class is taught by a TCOLE- and APD Spanish-certified Instructor and subject matter expert and is currently scheduled for 16 hours of instruction. The lesson plan was last updated and approved by the Academy on March 11, 2021.

The purpose of this course is to help cadets learn street survival Spanish and develop a better understanding of Hispanic culture, history, family, community, and language. Students will learn APD policy as it relates to utilizing Spanish-speaking officers and Language Interpreter Services. The Language Interpreter Service is available to APD officers 24 hours a day, seven days a week, and is used whenever necessary to perform police duties and to communicate with individuals who have difficulty communicating in English.

The course teaches students the importance of establishing trust with the Hispanic-American community and avoiding negative stereotypes. Students learn that fostering open communications effectively with the Hispanic community during police interactions includes avoiding the use of language that may be deemed offensive or derogatory in Hispanic, refugee, and immigrant communities.

Students learn that underreporting of crime is currently one of the biggest challenges facing law enforcement in serving the Hispanic American, refugee, and immigrant communities. Many members of these communities come from Latin American countries with highly repressive and authoritarian governments, where distrust of law enforcement is the norm. Occasionally, the failure to report criminal activity is due to internal community pressures, such as a fear of retaliation or a desire not to harm extended family members who are connected in some way to the criminal activity. At other times it is due to prior experience of discrimination or differential treatment against Hispanic Americans, immigrants, and undocumented workers by law enforcement officers.

Kroll agrees with Dr. Ferguson's suggestions to review and update this course content, especially the list of words cadets must study before the first class to reduce a "fear-based" mindset towards people of color, and to begin the class with non-fear-based introductions to the language. He also provides helpful suggestions on subscriptions to language learning apps and a custom curriculum.

Interacting with Drivers who are Deaf or Hard of Hearing

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on February 5, 2021.

The course explains the need for this type of training and defines the terms "deaf" and "hard of hearing" as defined by Section 81.001 of the Texas Human Resource Code. The course explains the Americans with Disabilities Act (ADA), which requires that individuals who are deaf or hard of hearing must have access to the same services provided to the other 90% of the population and may not be excluded or segregated from services.

Students learn about a variety of communication aids and services that are useful to law enforcement in many different situations. This includes the videophone and video relay service (VRS) or video interpreting service (VIS), which is a video telecommunication service that allows deaf or hard of hearing individuals to

communicate over video telephones and similar technologies with hearing people in real-time via a sign language interpreter. Students also learn that there are two different types of sign language—American Sign Language (ASL) and Signed Exact English—and learn differences between the two.

Students learn to distinguish what situations require an interpreter and how to identify specialty license plates issued to individuals who are deaf or hard of hearing in the State of Texas. The course helps students understand the vast population of deaf and hard of hearing individuals in Austin, which according to the Mayor's Office consists of approximately 8.8% of Austin's residents (approximately 100,600). Moreover, approximately 20% of the state's deaf population is around Austin.

Students learn that Austin is home to the Texas School for the Deaf and that the Texas Society of Interpreters for the Deaf has been offering interpretation services for residents for over 40 years. The course addresses helpful aids that assist the deaf and hearing impaired in Austin such as (1) video screens and GPS Ranger availability to facilitate walking tours, (2) TTYs, visual stands, and visual paging to relay messages to hearing-impaired passengers at the nearby airport, (3) call boxes and flashing signals throughout the city that inform deaf drivers of what lies ahead, and (4) that most state, federal, and city government jobs are accessible to deaf individuals.

Students also learn to think differently about how to handle certain calls that involve deaf or hearing-impaired individuals (e.g., DWI, family violence, handcuffing a deaf individual, etc.). For example, students learn that deaf individuals do not like to be separated from each other since not many people can sign, and that if an officer is investigating a crime involving deaf individuals, those individuals will have a hard time understanding why they are being separated. Students also learn handcuffing a deaf person behind their back is seen in the deaf culture as trying to silence them. When a deaf person is handcuffed in front, they are still able to communicate and are usually more willing to communicate. Finally, the course addresses all current APD policies that pertain to interacting with the deaf community.

This course is a good introduction to some of the issues and resources that officers must know in the field in dealing and interacting with the deaf and hearing-impaired community.

Kroll agrees with Dr. Ferguson's suggestion to revise this course to include information about Gallaudet University's history of segregation against Black deaf culture, which is an opportunity to reinforce the importance of multiculturalism. We also agree with his suggestions to consider adding interactive learning by recruiting content experts and engaging in on-site interactions and touring the Texas School for the Deaf.

Traumatic and Acquired Brain Injury

This class is taught by a TCOLE-certified instructor with experience in the topic area. It can and should be co-taught by an outside subject matter expert. It is currently scheduled for two hours of instruction. The lesson plan was last updated and approved by the Academy on October 30, 2019.

The course explains that acquired brain injury is an injury to the brain that occurs after birth and is not related to a congenital or a degenerative disease. Students are taught that acquired brain injuries can cause temporary or permanent impairments resulting in physical, emotional, and intellectual difficulties for the affected person.

Students learn the impact first responders can have on the public when responding to a variety of incidents, including domestic violence, heart attacks and strokes, drug activity, assaults, motor vehicle accidents and DWI's, and suicide attempts, among others. Students are provided a list of resources to utilize when responding to situations where an acquired traumatic brain injury is present.

Students also learn the signs and symptoms of a brain injury, such as confusion or disorientation, loss of consciousness, severe headache, nausea or vomiting, dizziness, trouble walking, and slurred speech or

vision. The course helps students become more aware of the impact of these signs and symptoms on the conduct and demeanor of their interactions with the public and helps them understand and identify the appropriate emergency medical referral.

Note: Although this course was not originally listed as one of the DEI-related courses for review, it relates to APD first responders' encounters with members of the community who are dealing with this kind of disability. (This course was not identified for review by Dr. Ferguson).

5.5 Community Input and Participation

Community Engagement / Lived Experiences Programming. The length of the planned 144th cadet class is currently set for 32 weeks and includes 37 hours of Community Engagement programming, including approximately 30 additional hours that were not previously included.[211] Past Academy sessions devoted seven one-hour blocks of time to guest appearances from community representatives, and this has been expanded to 37 hours.

- Although the precise details of the planned additional 30 hours of community engagement/lived experiences programming are currently being developed, the stated intent is to expand upon the level of participation and input from community leaders, representatives and activists who will be invited to speak to the cadets. The new Division Manager is currently working with Academy staff to proactively research potential community partners, identify points of contact within each organization, and reach out to a point of contact to determine willingness to participate and potential topics of discussion that will provide added perspective to cadet training or existing course content.
- APD provided Kroll with the below list of organizations the Academy is currently considering including in some aspects of Academy training. Where applicable, we have indicated with an * those organizations that have participated in past Academy classes:
    - Life Anew Restorative Justice*
    - Measure Austin*
    - Citizen Led Austin Public Safety Partnership (CLASP)
    - Mobile Loaves & Fishes
    - Mexican Consulate
    - Refugee & immigrant Outreach
    - Texas Association of the Deaf*
    - Transgender and Gender Marker Project
    - Austin Justice Coalition
    - Reimaging Public Safety Task Force
    - National Alliance on Mental illness (NAMI)*
    - The Settlement Home for Children*
    - Mothers Against Drunk Driving (MADD)*
    - The Jeremiah Project
    - The African American Youth Generation

In discussions with Kroll, the Division Manager has agreed to have the Academy reach out to such organizations as Just Liberty, the Austin Area Urban League, Texas Appleseed, and the Austin Equity Office, among others, to consider including as part of the community engagement programming. The Division Manager also agrees that some of the department's harshest critics should be contacted to see if

[211] In reducing the length of the training from 32 weeks to 30 weeks, the Academy plans to cut all intermediate courses, which will be taught over the first two years following graduation from the Academy. We believe that these intermediate courses are more effectively taught once the cadets have been on the street patrolling for a period of time. Thus, the planned reduction in the length of the Academy should not reduce cadets' readiness upon graduation. The 30-week content at the Academy will include all TCOLE / BPOC requirements and certain important tactical training courses, while enhancing the amount of community engagement and instruction on diversity, equity and inclusion content addressing cultural understanding and competency.

they are willing to have a meaningful conversation with cadets. Kroll believes that true and effective community engagement must include tough conversations that develop, if not agreement, at least mutual understanding of each other's perspectives. The Division Manager intends to have instructors reach out directly to these and other organizations, as there needs to be coordination and collaboration between the community representatives and the Academy before anyone actually comes in and speaks, with agreement on topics of discussion, parameters of discussion, and timing.

In addition, the Division Manager recently met with APD's Victim Services Division, which has agreed to participate in roleplays during Academy training, both as victim services role players and as victims, to provide feedback on how responses can be more victim-centered or trauma-informed, as well as to help cadets become familiar with how victim services would interface at a crime scene. Victim Services also has agreed to assist the Academy with getting instructors in touch with their community network (including Asian Family Support Services) to enable more lived experiences as part of the Academy's community engagement hours.

Kroll finds that the additional emphasis on community engagement and community input, combined with added course content such as "The History of Policing and Race in America" to be co-taught with a prominent subject-matter expert from the community, are positive additions to Academy instruction that place a necessary focus on the importance of meaningful police-community interactions and mutual understanding. As stated in the recent report of the Council on Criminal Justice Task Force on Policing:

> *Police must learn about and openly share with the public the histories of racial and other biases and injustice within their departments and law enforcement more generally. This process of acknowledgment should be part of a series of reconciliation efforts that includes empathic listening to community perspectives on police and their role in the nation's race relations—both past and present. A commitment to eliminating racial and other biases in policing, accompanied by public accountability to make good on that commitment, should follow. This public acknowledgment is particularly important to communities of color and all heavily policed communities, including immigrant and undocumented communities, LGBTQ+ communities, and people with disabilities and mental health challenges.*[212]

Community Video Review Panel (Panel): The recently completed Community Report of the Video Review Panel highlighted the hard work and diligent efforts of the Panel members that reviewed and provided feedback to a small group of APD officials on approximately 110 training videos over a seven-month period. The Panel consisted of a diverse set of community voices with backgrounds in a variety of fields, including civil rights, criminal justice reform, social justice advocacy, community organizing, academics and education, mental health, and psychology. The Panel met approximately twice a month and reviewed a selection of training videos used by the Academy pertaining to the following modules: Arrest, Search and Seizure; Arrest and Control; Crisis Intervention; De-escalation; Tactical Communication; Use of Force; and Use of Force - Legal. The Panel's task was to identify potential racial and gender inequities in the videos and note ways in which the video training material may reinforce larger cultural stereotypes and narratives.

- The Panel found that the vast majority of the videos were outdated and "disappointing in quality," contained "unprofessional or sensationalistic commentary," and perpetuated harmful stereotypes "against Black and Brown communities." The report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues.

[212] https://councilonj.foleon.com/policing/assessing-the-evidence/foundational-principles/

- The Panel also found that the recipients of violent and deadly responses from police as depicted in the videos were disproportionately working-class people and people of color. These same groups seldom benefited from crisis intervention or de-escalation strategies displayed by officers in the videos. The Panel found that the training videos emphasized the need for officers to assert control over communities of color, which often leads to rapid escalation with violent and sometimes deadly results for minor infractions. The Panel further highlighted that:
    - Women, trans, and non-binary people were limited in representation, with a "worrisome pattern of white male officers acting violently towards Black women because of perceived slights."
    - The majority of videos showed examples of "what not to do" instead of reinforcing desirable behavior.
    - The language used frequently in videos (i.e. "stop resisting", "just relax") often lacked awareness of how community members might perceive interaction with officers as threatening rather than helping.
    - The videos mostly reinforced the notion that every police-citizen encounter is potentially life-threatening, which encourages police overreactions and excessive uses of force.
    - "Many videos emphasized a transactional approach to interacting with the community with a focus on liability and quid pro quo exchanges, rather than what is needed to develop genuine, authentic interactions with community members to sustain long-term trust and relationships."
    - "Videos that showed officers antagonizing community members and using excessive force were attributed to aberrant individual behavior rather than acknowledging the cultural and systemic factors that permit or encourage such behavior."

Panel Recommendations. The Panel's recommendations addressed several systemic, community impact, and instructional concerns. The recommendations fell into four broad categories of issues and addressed the need to: (1) identify and root out biases in training materials, (2) develop more effective adult learning pedagogies, (3) build trust and positive relationships with communities, and (4) emphasize systemic change. The final report of Life Anew, which facilitated much of the work conducted by the Panel's community members and APD personnel, highlighted the following recommendations, among others, that called on APD to:

- Regularly implement diversity, race, equity, and inclusion professional development throughout APD.
- Engage in a larger conversation around racial justice, gender equality, and systemic change through an equity lens.
- Use diverse community panels in the Academy to have conversations about race, gender roles, expectations, and stereotypes.
- Clarify APD's policy on bystander intervention when an officer is behaving badly.
- Provide more active training for handling protests with non-militaristic approaches.
- Allow cadets to have more in-depth conversations about race throughout every training module. These conversations should involve people of color who have personal experience with racial equity issues and the training should teach non-fear-based policing in diverse communities.

- Increase the diversity (gender, race, ability, ethnicity) of police officers and the community members depicted in the training videos.
- "Eliminate the overrepresentation and fear mongering towards black bodies and people of color."
- Eliminate the siloed approach to teaching different content at the Academy by requiring instructors to work closely together and across subjects "to build a coordinated and integrated curriculum . . . to make the training flow better."
- Show more scenarios of positive interactions between people of color and the police.
- Include scenarios that demonstrate accountability for when policing goes wrong.
- Pair "what not to do" videos (when they are needed) with "what to do" videos, so cadets will clearly understand what they are supposed to do.
- "Focus on a service mindset and abandon the warrior mindset." Avoid selecting militaristic videos.
- Be intentional about showing officers demonstrating empathy and being "decent human beings." Emphasize "positive police and community interactions through repetition."
- Use videos from mental health experts and connect the dots between mental health and de-escalation.
- Continue use of a Community Review Panel to collaborate with APD and recommend training material selection.

APD Acceptance of Panel Recommendations. Although difficulties were encountered initially in attempts to establish trust and communication between APD and community representatives, the end result demonstrated a healthy collaboration, with several Academy leaders and instructors actively participating in the review panel's work. As a result of that approximately seven-month effort, APD has accepted all the Panel's recommendations concerning the video content and is actively making changes to its video library in response to those recommendations.

- The Academy is currently in the process of eliminating videos that were found to be offensive or insensitive to community concerns and replacing them where possible with more up-to-date and non-offensive depictions of subjects interacting with more diverse officers.
- In addition, Academy instructors are actively searching for appropriate replacement videos that more effectively depict the right way to do things, as opposed to videos demonstrating what not to do, as was the case with many of the videos reviewed by the panel. Where replacement videos have not been identified, Dr. Kringen has been provided the authority to replace such instruction with other adult learning means.
- APD also agreed to the Panel's many other recommendations and has outlined a general action plan concerning how it intends to implement the recommendations offered. Many of the recommendations provided are directly or indirectly incorporated into Kroll's short-term and long-term recommendations outlined in Section 7 of this report.

Formalizing the Community Video Review Process. Finally, APD is currently in the process of establishing a formalized system to comprehensively review, with community input, all future video content that has not otherwise been reviewed by the Panel. The previous Panel met with Dr. Kringen on March 31, 2021. Next steps include introducing Dr. Scott Bowman, who has agreed to serve as a new member, and finalizing committee members that want to stay on. A second Panel meeting occurred on April 20, 2021. The new Panel plans to meet pursuant to a regular schedule moving forward.

5.6 Professionalism of Instructors

Instructor Professionalism. Kroll has been uniformly impressed with the passion and commitment to teaching exemplified by the Academy's current leaders and instructors. They appear genuinely open to ideas that will make them better instructors and help cadets develop into first-rate police officers.

- Kroll notes that changing the culture of an institution and long-term notions embedded into the way things have always been done is no easy task. While most instructors and supervisors state they are open to working with content experts and incorporating active learning strategies, they are passively awaiting guidance and input from leadership, including the new Division Manager, to help advise them on changes to teaching methods and course content.
- Nevertheless, Academy staff are open to incorporating outside civilian content experts as instructors in certain courses (e.g., History of Policing and Race in America and some other DEI-related courses), if done in coordination and partnership with APD personnel.
    - At present, except for History of Policing and Race in America (discussed in Section 5.4 above), plans to incorporate outside content experts in other classes (e.g., criminal defense attorney to talk about search & seizure law from a defense perspective; homeless advocate to discuss issues faced by the homeless population; mental health expert to address relevant issues, etc.), while being considered, are not yet developed. However, Dr. Kringen has included this as a top priority as she works with instructors to plan for the next and future cadet classes, and it will be a priority of the newly established Academy Curriculum Review Committee.

5.7 Cadet Injuries / Graduation Rates

5.7.1 Cadet Injuries (2015 – 2020)

According to Appendix I of the Community + Equity Assessment Series report, and as confirmed by Kroll through APD-provided data, cadet injuries over the past six years have fluctuated as follows:

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	1
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	1
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	2
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	1
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	3
Covid-19	--	--	--	--	--	56
TOTALS:	**90**	**123**	**77**	**116**	**98**	**68**

- According to data provided by APD, from 2015 to 2020, at least 509 cadet injuries occurred at the Academy. The racial and ethnic breakdown shows that, of these 509 injuries, 348 (68.37%) were to white cadets, 85 (16.7%) to Hispanic cadets, 57 (11.2%) to Black cadets, and 19 (3.73%) to Asian cadets. As noted in the Equity Assessment report, although "the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%)."[213]
- The Academy requires a healthy dose of physical fitness and defensive tactics in an effort to prepare cadets for any number of crisis situations they may confront at some point in their careers as police officers. As noted by former Chief Manley, "we pepper spray our cadets because officers need to know what it is like. We have our cadets engage in boxing because we hire people who have never fought before, and we want them to be okay when this happens after they become officers."

5.7.2 Graduation Rates by Race and Gender

Graduation rates at the Academy over the last five years show similar racial and gender disparities:

Academy Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[214]

- APD's data illustrates that Black cadets are less likely than their peers to graduate from the Academy, and more likely to be injured, than any other race. Female cadets also have lower graduation rates than white and Hispanic male cadets. As a result, Black and female cadets graduating from the Academy are underrepresented when compared to the population of Austin as a whole.
    - In terms of statistical significance tests (Chi-square analyses), overall Black cadets are significantly ($p < .01$) less likely than non-Black cadets to graduate over the entire period

[213] "Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications," page 9 (December 14, 2020).

[214] According to the Report of the Community + APD Equity Assessment Series, City of Austin Equity Office, December 14, 2020, page 8, APD has recruited one Asian woman who has successfully completed the Academy within the past five years.

examined.[215] This pattern was only true for Black cadets and not for other racial/ethnic groups.

- As noted elsewhere, however, there appears to be a shift in this long-term pattern. The race differences were not significant in the last two recruiting classes (142M and 143). Thus, the overall race-graduation differences (particularly Black cadet failure patterns) were driven by pre-2020 patterns.
- Overall, female cadets are also significantly ($p < .01$) less likely than male cadets to graduate over the entire period of study. However, the gender differences were not significant in the last two recruiting classes (142M and 143). Thus, the overall gender-graduation differences were driven by pre-2020 patterns.
- Limited statistical power inhibits our ability to determine whether Hispanic females and Black females fail to graduate at a divergent rate than all other groups. However, each factor alone (race and gender) were clear predictors of graduation in the pre-2020 trends.

5.7.3 Statistical Analysis of Data

To better understand the experiences of cadets within the various academy settings, we conducted a series of statistical analyses on the data collected by APD documenting both injuries and graduation rates from the Academy. First, we examined the likelihood of graduation for candidates who began training between January 2015 (130 modified) and February 2020 (class 143).[216] This equates to 695 individuals who began training, of which 72.9% (N = 507) graduated from the Academy.

We further examined if the overall 72.9% APD graduation rate is consistent across demographic groups. As a first step, the research team used binary logistic regression analysis, a regression-based framework to assess whether there were distinguishing characteristics of cadets that delineated their likelihood of graduation (value = 1) or non-graduation (value = 0) as the outcome measure. The statistical framework used in this report is based upon the null/alternative hypothesis counterfactual model that assesses whether there are differences that can be attributed to chance (supporting the null hypothesis) or beyond chance (supporting the alternative hypothesis). The corresponding p-value follows the conventional framework of .01 (or 99% confidence) and .05 (or 95% confidence). Thus, statistically significant findings suggest the differences across categories or between groups are beyond chance at the 95% or 99% confidence levels, which is the conventional social scientific threshold.

The measures of interest included in the analyses are indicator variables, coded as dichotomous in nature: modified class (value = 1 for cadets within modified classes) and its inverse (non-modified classes, coded as value = 0 for cadets in non-modified classes); male (coded as value = 1 for males, which has an inverse value = 0 for females); and, Black (coded as value = 1 for all Black cadets, and its inverse as value = 0 for all non-Blacks).

Table 1 below shows there are two statistically significant coefficients that distinguished graduation from non-graduation among the pool of cadets. First, Black cadets are significantly less likely to graduate compared to other racial groups (b = -.777, s.e. = .293, p <.01). Second, if the cadets are male (b = .547,

[215] The Chi-Square results were derived from the Pearson Chi-Square statistic. Chi-square analyses are based on the null/alternative hypothesis counterfactual framework that assesses whether there are differences across categorical measures (e.g., race and sex with graduation). The corresponding p-value follows the conventional framework of .01 (or 99% confidence). Thus, significant findings suggest the differences across categories (e.g., Black vs. non-Black with graduation) is beyond chance where $p < .01$.

[216] As explained on page 31, the Regular Academy is an approximately eight-month program for police officer candidates with no prior law enforcement experience, while the Modified Academy is approximately four months long and designed for officer candidates who have sufficient law enforcement experience in another agency.

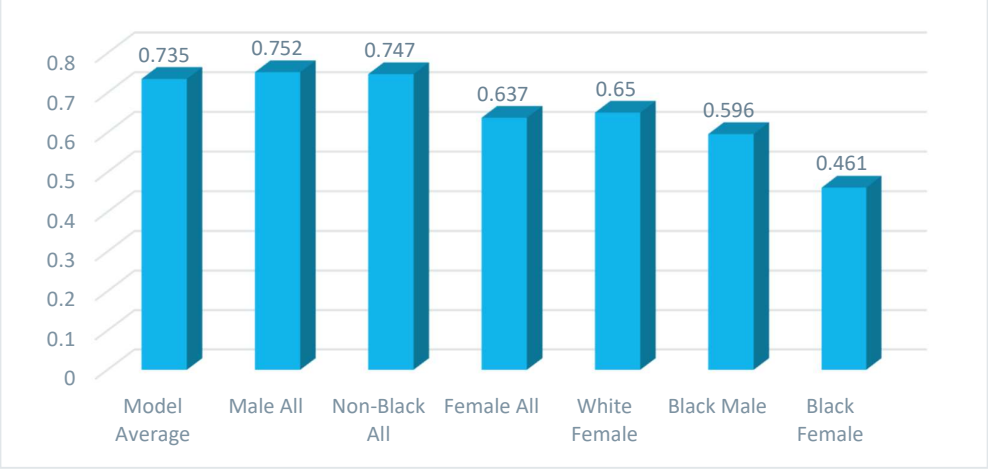
s.e. = .224, p < .01), they are also significantly more likely to graduate compared to females (which means that females are significantly less likely to graduate when compared to males). These findings hold even after controlling for injuries and attendance in a modified class. Importantly, there are no significant differences between cadets who are injured versus those who are not injured in their likelihood of graduating from the training academy. In terms of overall graduation rates, the modified classes approached significance (p = .08) but did not quite reach that threshold (suggesting that modified classes had a marginally, although not significantly higher rate of graduation relative to standard length classes).

Table 1. Logistic Regression Estimates for Graduation (Value = 1) or Failure to Graduate (Value = 0) for Austin Police Academy (N = 507) between 2015 and 2020

Measure	Beta	St. Error	P-Value
Male	.547	.224	.014
Black	-.777	.293	.008
Injured	-.048	.177	.787
Modified Class	.541	.311	.082
Constant	.581	.233	.013

To further explore these relationships, Figure 1 below shows the predicted probabilities of graduation based on cadets' race and sex. A predicted probability can be interpreted roughly as the likelihood of the event occurring after statistically controlling for everything else at their means. That is, these scores predict the likelihood that an individual factor influences graduation rates, all else being equal. For example, the probability of graduation for male cadets is 75.2%, compared to 63.7% probability for females.

Figure 1: Predicted Probabilities of Graduation Based on Gender and Race of Cadets



Further examining cadets by race and sex demonstrates there are essentially two groups of cadets that differ in their likelihood of graduation.

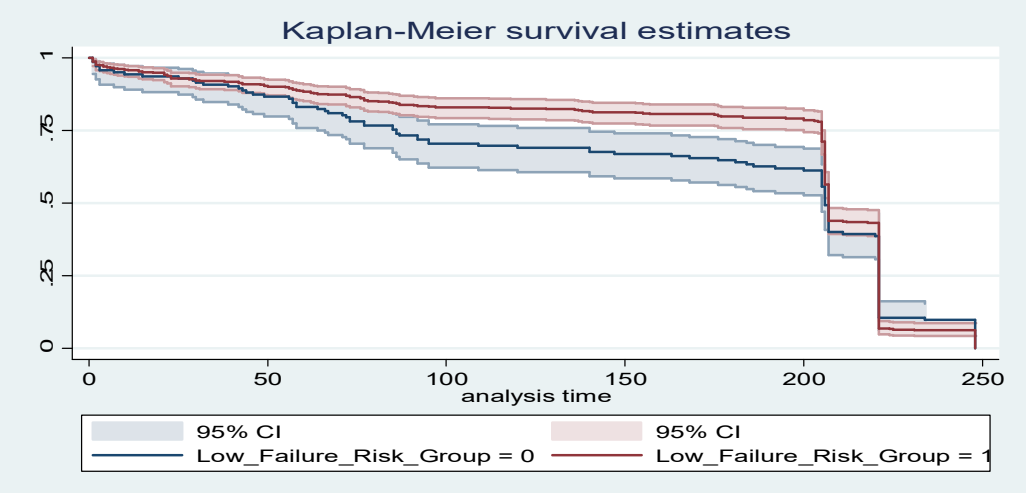
- **Group 1:** Cadets who are female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprises roughly 23% of the classes.
- **Group 2:** Non-Black males (White males, Hispanic males, and Asian males), which comprises roughly 77% of the classes.

The results show that ***Group 1 is at a higher risk of not graduating from the training academy***, while ***Group 2 is at a lower risk for failure to complete academy training***.

When attempting to delineate potential influencing or intermediary factors between these two groups of cadets, we next examine Kaplan-Meier survival curves. These curves are created from a statistical technique that distinguishes between training onset and time until academy dropout. This analysis includes all cadets, with those who graduate as 'censored' (i.e., not experiencing a 'failure' event) and those who failed to complete the Academy, while also noting the specific periods of the greatest likelihood of Academy dropout.

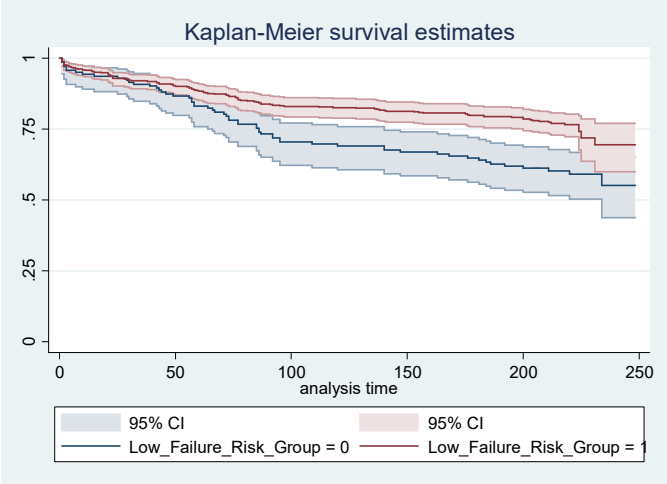
Figure 2 graphically displays that the "time to attrition" is roughly identical for the two groups initially. However, at roughly day 55 or so, the trajectories of the two groups change. At this point, the *High Failure Risk Group* (Group 1, comprised of Black and female cadets) becomes significantly more likely to not complete the Academy training, compared to the *Low Failure Risk Group* (Group 2, comprised of all non-Black males). The distinct and divergent trajectories toward graduation persist for the duration of the time in the Academy, from roughly day 55 onward.

Figure 2. Kaplan-Meier Survival Analysis for Completion of the APD Training Academy



While injury alone did not distinguish graduates from non-graduates, among these two groups (Group 1= females or Blacks, compared with Group 2 = all non-Black males) the patterns of injuries are somewhat distinct. Using the same Kaplan-Meier survival estimates, we examine *time until injury* (see Figure 3 below). The findings show that Groups 1 & 2 have different trajectories toward injuries as their time in the Academy progresses. Roughly 10% of each group reports an injury before the end of the first day; their risk of injuries initially is the same. However, the average number of days until injury for Group 1 (*High Failure Risk Group*) is 55 days, compared to 66 days for Group 2 (*Low Failure Risk Group*). Also of note, roughly 25% of those injured from Group 1 (*High Failure Risk Group*) are injured by the end of the 8th day (second week of training), compared with the 18th day for the 25th percentile of Group 2 (*Low Failure Risk Group*) who are injured. In short, the risk of injury is the same for the first day of training (when approximately 10% of each group report injuries), but after the start of the second week of training, the trajectories toward injuries diverge between these two groups and these differences persist throughout the duration of the Academy.

Figure 3. Kaplan-Meier Survival Analysis for Cadet Injury with the APD Training Academy



We also conducted a series of sensitivity analyses. The findings show that the *types of injures* for cadets across race and sex are virtually identical in terms of percentage distributions. That is, cadets in both Groups 1 & 2 are inflicted with the same types of injuries. The difference between these groups is *when they are injured*, with an earlier onset more likely for Group 1 (female or Black cadets), compared to later onset of injuries for Group 2 (all non-Black males). In summary, cadets in the *High Failure Risk Group* (Blacks and females) are more likely to be injured earlier in the training academy program, compared to those who are at lower risk of failing to complete the Academy.

Importantly, the divergence across race and gender groups related to the likelihood of graduation does not occur within the modified/shortened classes (which comprises roughly 13% of all cadet experiences). However, Black and female cadets are less likely to be in the modified classes. Specifically, Group 1 (Blacks or females) comprise 23.8% of non-modified classes, but only 9.9% of modified classes.

We also examined reasons for failure among the cadets, which is dichotomized as voluntary or involuntary removal from the Academy. Consistent with prior findings, we found that within the modified classes there were no race or officer sex differences that were associated with the type of failure (voluntary or involuntary). However, within non-modified classes, the Pearson's Chi-Square statistic (a goodness of fit statistical test to assess whether there are associations between categorical measures, in this case, race, sex, and types of graduation failure) showed that females were marginally significantly ($p < .10$) more likely to voluntarily withdraw from the Academy than were males. Table 2 (below) shows the results of this bivariate statistical analysis, which included the 174 cadets who failed to graduate the non-modified academies in this study period. Roughly 69% of females who failed to graduate the Academy during this period did so through voluntary withdraw; comparatively, only 54% of males who failed to graduate the Academy did so voluntarily. There were no other discernable correlates (e.g., cadet race) associated with voluntary versus involuntary failures.

Table 2: Pearson's Chi Square Results for Reasons for Graduation Failure (Voluntary Withdraw versus Involuntary Failure) between Male and Female Cadets in Non-Modified Classes (N = 174).

Demographic Correlate	Voluntarily Withdrew	Involuntarily Failed	Pearson's Chi-Square
Females	29 (69.0%)	13 (31.0%)	2.75, (1 df), p = .097
Males	72 (54.5%)	60 (45.5%)	

*Percentages are displayed in 'rows' for comparative purposes

Finally, the most recent class (Class 143) did not have any differences across cadets' race and sex that corresponded with the likelihood of graduation. For Class 143, only one measure (injuries) predicted the likelihood of graduation, with those who were injured significantly less likely to graduate. Also note that 86% of these reported "injuries" were COVID-19 positive tests.

Summary

The findings from the logistic regression models, predictive probabilities, Kaplan-Meier Survival analyses, and the sensitivity tests can be summarized as follows:

1. Nearly 73% of cadets entering the APD Training Academy successfully graduate.
2. The likelihood of graduation varies significantly across cadets by race and sex. Specifically, Black and female cadets are statistically significantly less likely to graduate compared to cadets of other races and male cadets, respectively.
3. Overall, the likelihood of graduation is not significantly impacted by injuries within the Academy.
4. Modified (shortened) classes had a marginally, although not significantly higher rate of graduation relative to standard length classes.
5. The predictive probability of graduation ranges from a high of 75.2% for males to a low of 46.1% for Black females.
6. Two groups of cadets significantly differ in their likelihood of graduation and timing of injuries.
    - Group 1 (*High Failure Risk Group*): Cadets who are female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprises roughly 23% of the classes.
    - Group 2 (*Low Failure Risk Group*): Non-Black males (White males, Hispanic males, and Asian males), which comprises roughly 77% of the classes.
7. Group 1 cadets are significantly less likely to complete the Academy training, compared to cadets in Group 2. The time to attrition is roughly identical for the two groups initially; however, at roughly day 55, the trajectories of the two groups change, with Group 1 less likely to complete the Academy from that point forward.
8. Injury alone did not distinguish graduates from non-graduates; however, injury patterns differ across these two groups.
    - Roughly 10% of each group reports an injury before the end of the first day; their risk of injuries initially is the same.
    - The average number of days until injury for Group 1 (*High Failure Risk Group*) is 55 days, compared to 66 days for Group 2 (*Low Failure Risk Group*).
    - A quarter of those injured from Group 1 sustain their injuries by the end of the 8th day (second week of training). By comparison, a quarter of the injuries from Group 2 occur by the 18th day.
9. The *types of injuries* sustained by cadets do not differ significantly across race/sex group; however, there are differences in *when they are injured*, with an earlier onset more likely for Group 1 (female or Black cadets), compared to later onset of injuries for Group 2 (all non-Black males).
10. Graduation rates for the modified (shortened) classes do not differ significantly across race and gender; however, Black and female cadets are significantly less likely to be in the modified classes (9.9% of cadets in non-modified classes are Black or female, compared to 23.8% of non-modified classes).

11. The reason for graduation failure (voluntary withdraw versus involuntary failure) was marginally significantly ($p < .10$) divergent when comparing males and females. Specifically, females who did not pass the Academy (within non-modified classes) were more likely than males to voluntarily withdraw.
12. The most recent class (Class 143) did not have any differences across cadets' race and sex that corresponded with the likelihood of graduation; however, injured officers are significantly less likely to graduate (86% of injuries are COVID-19 positive tests).

Positive Changes. Kroll notes that the positive changes in the diversity of Academy leadership and to some of the more physically and psychologically intense components of the Academy (i.e., elimination of past abusive practices), as well as a distinct philosophical shift among Academy leadership to actively encourage all cadets to succeed, suggests that the Academy is conscious of and working to eliminate these inequities.

Recruiters Underutilized. The unique relationship that develops between APD recruiters and cadets is currently underutilized. Recruiters typically get to know cadets well and develop a more personal relationship with them than do Academy instructors. In the past, APD recruiters would reach out to a cadet if he or she left the Academy to obtain feedback and discuss what happened. We are told that this practice has been discontinued, although APD recently agreed to reinstitute it.

Since recruiters have a prior relationship with the cadets and perform a different function than Academy instructors, they can be a good sounding board for why a cadet left the Academy. Was it a personal decision or circumstance beyond their control such as a testing failure? Exit feedback can ensure that the Academy identifies opportunities to improve recruitment and retention. Given the current diversity of the Recruiting Unit, recruiters could occasionally assist Academy instructors in role-play scenarios and group team building exercises when needed. Increasing recruiters' interactions with cadets as they train could also serve as a form of emotional support for cadets. The recruiters often know about the cadets' personal lives and could help identify for Academy staff those cadets that may be dealing with personal challenges, such as illness of a family member, loss of a loved one, financial or other issues that could impact performance.

5.8 Crisis Intervention Team Training

In September 2018, a report from the Office of the City Auditor reviewing APD's responses to mental health-related incidents found that "APD has the highest per capita rate of fatal police shootings involving persons believed to be experiencing a mental health crisis."[217] Additionally, the report found that the department's crisis intervention team (CIT) program, developed as a best practice program, did not meet all of the core requirements for best practices developed by CIT International, and as a result, placed people experiencing a mental health crisis in Austin at higher risk of a negative police interaction.[218] Two more reports, one from the Meadows Mental Health Policy Institute sanctioned by Austin City Council,[219] and one from the University of Texas School of Law Human Rights Clinic and the Austin Community Law Center,[220] supported these claims, and each made additional recommendations to improve the department's response

[217] Office of the City Auditor, "APD Response to Mental Health-Related Incidents" (2018), 7.

[218] *Ibid*.

[219] The Meadows Mental Health Policy Institute for Texas, "Recommendations for First Responder Mental Health Calls for Service" (2019), http://www.austintexas.gov/edims/pio/document.cfm?id=320044.

[220] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings" (2019), https://law.utexas.edu/wp-content/uploads/sites/11/2019/09/2019-09-HRC-APD-Mental-REport.pdf.

to mental health-related incidents. Since these reports, the Academy has greatly improved its CIT training, as noted below.

Crisis Intervention Training. The Academy has greatly improved its CIT training in recent years and developed a training program that is consistent with national best practices. The 144th cadet class schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness (NAMI), helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families." [221] Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety."[222]

- The CIT model is a police-led, trauma-informed, collaborative response for behavioral health crises that involves training patrol officers to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis and to refer those individuals to appropriate services, as opposed to conducting an arrest, when possible. The goals of CIT programs are to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges. These programs have most traditionally been used to address individuals experiencing mental health or substance use-related crises.
- CIT training not only provides officers with more tools to do their jobs safely and effectively, but it also improves their knowledge of mental illness and community resources.
- Several evaluations have found that CIT training improves officer knowledge surrounding behavioral health-related challenges, reduces stigma associated with behavioral health, and increases officer empathy and confidence in their ability to successfully intervene in a crisis incident.
- Researchers have found that CIT training successfully increases officer awareness of behavioral health services within their communities and their support for referring individuals in crisis to these services.
- Evaluations show that CIT training increases officer familiarity with de-escalation techniques and support for de-escalating crisis events.

Curriculum Evaluation. The time allotted for the Academy's CIT course is 40-hours of instruction. For someone to qualify as an Academy instructor for CIT training, he or she must be one of the following:

- An active member of the APD CIT Unit;
- A certified TCOLE Instructor; and/or
- A subject-matter expert – i.e., must be currently serving as a mental health officer or as a member of a Crisis Intervention Team for at least two years in APD or have Mental Health Peace Officer certification through TCOLE.

The following mental health agencies and organizations provide subject matter experts (guest speakers) and training materials to assist in the Academy's CIT training:

- Integral Care

[221] https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs.

[222] *Ibid*.

- Adult Protective Services (APS)
- National Association on Mental Illness (NAMI)
- The Military Veteran Peer Network (MVPN)
- The ARC of Texas
- Homelessness Outreach Street Team (HOST) - a collaboration of several mental health service organizations in Austin.

The above agencies provide mental health services and expertise in crisis intervention, adult protection, child & family services, intellectual and developmental disabilities (IDD), Post Traumatic Stress Disorder (PTSD) (including military sexual trauma), traumatic brain injury, and homelessness.

The Academy's CIT training includes classroom instruction on various forms of mental illness, their causal factors, and the impact such illnesses have on individuals. There is also instruction on what signs or symptoms a student might encounter when engaging a citizen involved in a mental health crisis. Scenarios and role-play exercises are cooperatively graded and observed by Integral Care.

The six selected role-play exercises were used with the permission of Ozaukee County NAMI and the Texas Veterans Commission. These six role-play videos total approximately twenty-six minutes in length. Role play exercises involving de-escalation training total four hours during the CIT course of instruction, which includes an evaluation of de-escalation principles during the exercises.

The role play scenario-based training provides students with realistic life scenarios that replicate exposure to the potential stressors and challenges of engaging with people experiencing a mental health crisis. The practical demands of officer safety, de-escalation, and problem solving are included in the training. The goal of this training is to enable students to use the skills and tools learned to successfully de-escalate these encounters. Kroll finds that the Academy's CIT training is comprehensive and involves a balanced mixture of classroom instruction, role play scenario-based exercises, and instruction in collaboration with mental health subject matter experts that is consistent with best practices. However, we note that the 2019 report from the University of Texas referenced above suggests that, while Austin's use of a Crisis Intervention Team partially aligns with the "Memphis Model," Austin's program does not incorporate all best practices for training, like refresher courses and visits to mental health facilities.[223]

Additional CIT Instruction. After two years of law enforcement service, APD officers can voluntarily receive an additional 40 hours of training to become CIT Patrol Officers, who directly respond to calls regarding incidents involving a person in a mental health crisis. Members of a separate Crisis Intervention Unit are responsible for administrative tasks like reviewing all calls classified as relating to a mental health crisis, functioning as the liaison between APD and organizations in the mental health community, and assisting with training the CIT curriculum at the Academy.

Kroll finds that the Academy's CIT training is comprehensive and involves a balanced mixture of classroom instruction, role play scenario-based exercises, and instruction in collaboration with mental health subject matter experts. However, while APD has instituted several reforms to the program, the Academy should continue to monitor the success and failures of the program and consistently refer to up-to-date best practices. In addition, APD should continue to build collaborations with various mental health-related entities, increase emphasis in training on reducing stigma of mental illness among officers, and require regular refresher courses on CIT principles.

[223] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings," 17-21.

5.9 Additional De-escalation / Use of Force Training

ICAT Training. Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum.

- ICAT is an evidence-based best practice designed by the Police Executive Research Forum (PERF) to help police officers "safely and professionally resolve critical incidents involving subjects who may pose a danger to themselves or others but who are not armed with firearms." (https://www.policeforum.org/assets/icattrainingguide.pdf). In its original format, ICAT training is designed as a 16-hour training block.[224]
- ICAT training instructs police officers in de-escalation tactics and critical thinking skills for the management of potentially volatile police-citizen encounters, encouraging the integration of crisis recognition and intervention, communication skills, and operational tactics in police responses. This training is designed for patrol officers responding to circumstances involving persons in crisis – that is, individuals that may be behaving erratically due to mental health concerns, substance use, situational stress, and/or intellectual/developmental disabilities.
- The ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries (Engel et al., 2020).
    - Although officers have fewer options when dealing with threats involving firearms, ICAT is a training guide designed to fill a critical gap in training police officers how to respond to volatile situations in which subjects are behaving erratically and often dangerously, while unarmed or armed with a weapon other than a firearm (e.g., knife, baseball bat, rock, etc.). As explained by PERF, the ICAT Training Guide "includes model lesson plans and support materials (including Power-Point presentations, videos, and other resources) in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics. ICAT then integrates these skills and provides opportunities to practice them through video case studies and scenario-based training exercises."
    - ICAT's course content includes Legal Concepts, Critical Decision-Making, Crisis Recognition, Communication, and Tactics. Students learn to demonstrate key verbal communications skills that are critical to defusing (de-escalating) tense situations and gaining voluntary compliance. Students also learn to explain concepts such as "tactical pause," distance plus cover equals time, tactical repositioning, and continual assessment, all of which are essential to de-escalating encounters with citizens in crisis.
- The Academy should expand the tenets of ICAT in its training so that it becomes an expected action to emphasize de-escalation whenever an officer interacts with the public and there is a possibility of a confrontation. Including these efforts in role-playing exercises and case studies will help embed the principles of de-escalation into the culture of APD.
- **Verbal Communication and Public Interaction**. This course is a state-mandated course pursuant to BPOC, Chapter 25. Kroll reviewed the lesson plan for this course, which is a sixteen-hour de-

[224] The Academy curriculum includes other de-escalation scenario-based role play training in the following courses: CIT (4 hours), Verbal Communications and Public Interaction (16 hours), and Basic Taser training (1 hour), which combines for an additional 21 hours of de-escalation training. In combination with the 10-hours of ICAT training, the Academy provides a total of 31 hours of de-escalation training.

escalation course focused on teaching cadets to effectively communicate when interacting with members of the public. The entire course is devoted to communication skills that are intended to de-escalate encounters with members of the community in an attempt to avoid using force and defusing other situations. The crucial components of paralinguistics, kinesics, and empathy are discussed.

- **Taser Basic User Course**. This is an eight-hour course on the use of the Taser Conducted Electrical Weapon (CEW) that incorporates four drills and four scenarios and includes one hour of de-escalation training. The course provides operational theory and practical training to safely and effectively operate the issued CEW. The course is completed in its entirety using training materials provided by Axon International (Manufacturer).

5.10 Non-English-Speaking Residents and Persons with Disabilities

In addition to training cadets on Law Enforcement Survival Spanish, which was discussed in Section 5.4, the Academy makes cadets aware of the additional resources available to officers to assist in interactions with non-English speaking residents. For example, when interacting with a resident who speaks a language other than English, officers can send out a city-wide dispatch for assistance with the particular language at issue and an available interpreter will respond to the scene. If there is not a bilingual officer available who can assist, an official interpreter can be requested from the city's Language Line, which will immediately dispatch an interpreter who can help translate. Certified court interpreters are also available when needed by investigative units. This information is supplemented and detailed in APD General Order 609.2 and was confirmed in Kroll interviews.

The department also offers an internal stipend program that will pay for officers interested in learning additional languages other than English (including American Sign Language). The program tests for proficiency and compensates officers who become bilingual.

Additionally, as noted in Section 5.4, the Academy teaches a course on interacting with deaf and hearing-impaired individuals in traffic stops and other scenarios. The course discusses the variety of communication aids and services that are useful to law enforcement in communicating with deaf individuals, including the videophone, video relay service (VRS), and video interpreting service (VIS), which allow deaf or hard of hearing individuals to communicate over video telephones and similar technologies with hearing people in real-time with the aid of a sign language interpreter.

Cadets are trained on how to distinguish what situations require an interpreter and how to handle certain calls that involve deaf or hearing-impaired individuals. They also learn about all current APD policies that pertain to interacting with the deaf community.

Training on communicating with persons with disabilities is covered in the 40 hours of Crisis Intervention Team training concerning interactions with residents who have a mental illness/disability.

5.11 Field Training Officer Program

The APD Field Training Officer (FTO) Standard Operating Procedure (SOP) comprehensively addresses the criteria and method for selecting FTOs, the training provided to perform their duties, supervision, evaluation, the length of time trainee officers spend in the program, and the methods by which FTOs assess and evaluate trainee officers in the field.

APD Field Training Program. The APD Field Training Program (FTP) is a 15-month education and evaluation program. At present, the department is authorized 152 FTO positions. FTOs are considered role

models for their trainees. To be selected as an FTO, an officer must complete a minimum of 24 months continuous time as an APD commissioned officer on patrol. (Officers that graduated from the Modified Academy or those with a minimum of two years of prior law enforcement experience from an accredited law enforcement agency may qualify as an FTO after 18 months continuous time as an APD commissioned officer.) FTOs are to teach respectfully and professionally and may not have trainees do any activities beyond the normal scope of their duties, and the department prohibits FTOs from requiring trainees to conduct tasks as a "rite of passage" or "initiation."

Selection Procedures. Each level in the FTO applicant's chain of command is responsible for the selection and approval of the applicant as an FTO. To be selected, FTO candidates are required to demonstrate their commitment to community policing, as well as their problem-solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts, and commitment to APD philosophy are the primary criteria in the selection of FTOs.

Excessive numbers of complaints (sustained and not sustained) or use-of-force incidents shall bar a candidate from selection as an FTO for no less than two years. Sustained disciplinary action against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based discrimination or slurs, or other serious examples of police misconduct, shall result in termination from the FTO program.

FTO Training. The following Training is mandatory for selected FTO's: FTO Advanced Training completed each calendar year, FTOs that complete the APD Basic FTO School (School) are exempt from the FTO Advanced Training for the same calendar year that they complete the School.

FTO Surveys. FTOs may elect to participate in the FTO 360 survey and/or FTO Exit survey. The 360 survey is anonymous and intended to provide information directly to FTOs who want to improve their performance and skills. Survey results are not shared with anyone except the affected FTO.

Staff Inspections. Annually, the Field Training Unit cooperates with the Inspections Unit of the Professional Standards Bureau when they perform a staff inspection. The purpose of the staff inspection is to compare APD's formal expectations with the actual performance of the Field Training Unit to determine if APD policy and SOPs are being followed.

Incentive Pay. Candidates that are selected to participate in the FTO program receive a pay stipend as a financial incentive, in recognition of the fact that becoming an FTO adds significant responsibilities to an officer's job duties. However, several officers Kroll interviewed indicated that the stipend for being an FTO does not adequately compensate officers for the added responsibilities. Most officers who become FTOs do so primarily because they want to contribute to the development and training of new officers.

Neighborhood Portfolio Exercise. Throughout the Field Training Program, trainees are to develop a detailed geographical, social, and cultural understanding of the area to which they are assigned. This Neighborhood Portfolio Exercise is designed to give the trainee a sense of the community where they work. It also encourages the trainee to develop community contacts that are critical when practicing community-oriented policing and problem-solving initiatives.

Returning Officer Program. Officers that have been rehired by APD or who return from an extended period of leave (e.g., military deployments) are assigned to the Continuing Education Unit's Returning Officer Program. This requirement only addresses the need for updated training and not any de-programming from military service. For example, there is no provision for mental health evaluations or other services prior to returning to full-time police service (officers can deploy several times). Common mental health symptoms of combat veterans include PTSD, anxiety, sleep problems, depression, withdrawal, and isolation aside from physical injuries. If not appropriately addressed, these frequently unnoticed symptoms

can translate into significant issues of concern for the department regarding officer conduct and interactions with the community. To address this, Kroll has included a long-term recommendation that addresses returning military veterans and recruiting from the military.

Evaluation. Overall, APD's FTO Program is well structured and documented. However, to further strengthen the program and address several of the concerns raised by the City of Austin and the community concerning the FTO Program, we have included some additional long-term recommendations, which are outlined in Section 7 of the report.

Kroll also notes that ***Section .06, Sub-section C, Paragraph 10*** of the SOP appears incomplete ("No Internal Affairs records of sustained violations that reflect any form of ethical misconduct, and" . . .) and should be corrected.

6 COMMUNITY FEEDBACK

During the course of our assessment, Kroll spoke with community leaders and activists associated with the following organizations:

- Just Liberty
- NAACP
- Austin Area Urban League
- Austin Justice Coalition
- Texas Appleseed
- MEASURE
- Greater Austin Crime Commission
- Community Police Review Commission
- Community Video Review Panel

We also presented our preliminary findings before City Council on March 2, 2021, and before a community forum put together by the Office of Police Oversight on March 23, 2021, which was attended by approximately 50 participants. A number of common themes and comments were provided by the community members we spoke with, including the following:

Community Engagement

- APD is a fairly standard representation of its species in a community that has been migrating towards a very different view of what public safety looks like – there is a widening gap between APD's view of the department vs. the community's view of the department.
    - APD tends to dig in its heels to standard practice and resists calls for reforms.
- The department needs to continue the work of community engagement – a lot of officers want to do good. There needs to be a dialogue with community members that are willing to work with APD on it.
- We do not like the term "re-build" trust – because there was never any trust built between the police department and the Black community.
- APD needs a diverse academy with community involvement, with all groups represented – Black, Brown, women, etc. The department needs to train people on cultural competence – but this is not currently happening. The "groundwater is muddy" – we need transformational change.
- APD shows "no respect and no interest in community policing as it pertains to non-white bodies."
- There are solutions that community partners could offer to APD. But APD should initiate them, so it doesn't look like we are shoving it down their throats. The community can only force it so far.
- There was a stark difference between the community outreach that occurred under Chief Manley vs. Chief Acevedo. The way Chief Acevedo interacted with the community seemed more accessible and approachable, which resulted in more grace from the community.
    - Chief Acevedo did more to engage with the Latino community.

- APD tends to have better conversations with the community when they go out into the community (e.g., coffee conversations, etc.) rather than when the community comes to them. But the community does not always engage in these activities because of a lack of trust.
- It is important to recognize where Austin is in terms of change – more community policing will not necessarily solve the problem (mental health, homeless population). We need to divert calls involving mental health issues and social problem from police to other agencies.
- The whole reimagining policing process is happening now – Chief Manley was not willing to do this. We need someone willing to think outside of the box. It is very difficult to talk to someone who is not willing to examine the causes of police mistrust.
- The need for policing is not what it was when the 21st Century Task Force was drawn up. We need to get to a point where communities are healthy, and we need policing less and less. This is part of the ongoing conversation we are having in Austin.
- The Community Video Review Panel was pleased to learn that APD had accepted the Panel's video recommendations, but they want broader change and are tired of dealing with only surface-level changes.
- The Panel agreed that a formal structure to review the Academy's other training videos, as well as course content, should be established moving forward.
- More community engagement is needed as part of police training – the Academy's recent level of community engagement was virtually non-existent.

Cultural Competency

- APD needs to be "culturally responsive" – cultural responsiveness is not part of their training division. "Either you are teaching diversity, equity, and inclusiveness (DEI) or you are not – and they are not."
- There are a lot of cultural issues with the APD and the City of Austin. The Training Academy does not communicate well with different cultural organizations.
- We have to be able to screen out bigotry and white supremacy.
- For any sort of anti-racist training to work, you must examine the sustainability of that model and make sure that you revisit it – "a one-off doesn't work." You must revisit with similar types of training, taught by different individuals with experience in diversity and inclusion – this is bigger than just Austin. The mentality has to change, and it has to seep into law enforcement.
- The History of Race and Policing in America is a good step forward. It is important that all officers understand these issues. Some of this information may be "painful" but it is important for people to understand how their privilege (or lack of privilege) impacts everything. But such a course and its content need to be revisited annually so it can be sustained and impactful in the long run.
    - Police forces were historically developed to protect white interests.
- There should be requirements for annual training that deal with issues of diversity, equity, and inclusion.
- The City has historically been "anti-Black" – although we are growing in numbers, this is not necessarily happening in the Black community, and it is impacted by the Black community's

relationship with APD. Part of this is economic and the high cost of living; but it also comes from perceptions that the City is not serving the Black community.

- Austin is one of the most economically segregated cities in the country.

Transparency and Accountability

- "Are you open to criticism when you write your curriculum?" APD has been very resistant to outside critiques.
- "You must teach officers to respect everyone" – this is a must to have credibility, accountability.
  - This can be a "win-win" – but APD must change from a warrior to guardian mentality.

Training

- The Academy needs to teach more ethics and do more scenario-based training. What do you do if you see an officer employing excessive use of force? Etc.
  - Cadets must learn that they are here to support and serve the community, not to control the community.
- In 2018, there was an Academy class that lost a large number of cadets to attrition; several former cadets testified during a city council hearing – it was atrocious and compelling testimony.
- There is a "core lie" that has been disseminated to the community – that the core curriculum required by TCOLE cannot be changed by law; APD contends they can add classes but cannot change the core curriculum.
  - "That is not true" – there is a baseline of things a student must know when they leave the Academy, but there is no reason APD could not change and adjust the core curriculum.
  - TCOLE had an old curriculum that still referenced reading lists from the 1980s; they rolled out a new curriculum in the last 1-2 years, but the last cadet class was still being taught under the old curriculum.
  - Even though the City of Austin temporarily closed the Academy, APD was going to have to redo its curriculum anyway, because the TCOLE curriculum was substantially changed.
  - How courses are taught, and how instructors connect the dots between the units, is something that can be done differently without impacting the essential course content. It is a form of insanity that APD continues to teach "into the problems".
- Academy uses fear-based training. The video review panel report is illustrative of this theme.
  - That APD teaches its officers to "fear the public" and that officers "need to come home safe" at all costs is a major problem. This approach conflicts with the need to teach communication and trust, real-life dynamics that officers will confront in their jobs.
  - Police officers spend most of their days involved in what is essentially social service work, which is much different than "fighting crime." There is a deep vein of racism that constantly reproduces the problem.
  - It has been a horrifying experience for the people serving on the video panel – to see how the community is perceived and represented in the videos.
- No one has said the Academy needs to be closed forever – but there needs to be a coordinated and public effort to ensure that true reform occurs (with transparency).

- Consistency in messaging is important. Historically, there has not been a lot of consistency in what is being said regarding how APD is training its cadets and how individual officers are instructed.
- Why is Austin so late at banning chokeholds? And what tactics are the department teaching in the Academy when officers encounter certain situations?
- There is a gap in training – a police officer's first response should not be to engage in detrimental violence. Violence should be a last resort. You need to bring in mental health professionals in many situations that officers are asked to address.
    - Military tactics – e.g., taking the high ground and surrounding the enemy in a combat situation. APD applies military tactics during peaceful protests against people who have perpetrated no violence against officers – violent acts against non-violent protestors. It all goes back to leadership and training.
- Some would suggest that the problem is not at the Academy but with the Field Training Officer program after cadets graduate.

De-escalation Training

- APD says that de-escalation is "sprinkled" throughout the training – but why not make it more intentional?
- Austin has a high rate of officer-involved shootings with people in mental health crises.

Police Culture

- It should be part of the culture of APD that they want to do better – this is not a revolutionary concept. They should have been doing more from the very beginning.
- We need to "change the culture of not just policing but our community" – presenting public safety as a means to achieve "whole, flourishing communities."
- How cadets view the community (and how they are taught) is crucial – they need to be true "peace officers" as well as "sentinels" – there are elements of both (guardian and warrior) in what police officers do.
- A pro-police community representative noted that the Academy stopped doing a number of "paramilitary-type things" years ago, and that APD is trying to evolve the Academy into a hybrid paramilitary/civilian format. But this representative acknowledged that there is legitimacy to much of the community concerns and criticisms, and the impetus behind the community's desire for a guardian vs. warrior approach. "We applaud the level of scrutiny that police training has been given and should continue as it progresses." APD has done a lot to improve procedures and tactics, but it is an ongoing process. During the protests last summer, APD learned a lot about less-lethal munitions, etc. – this is a process where they continue to make improvements.

Recruiting and Promotion

- APD's standards are too low for how they recruit officers initially; they should start with people graduating college with criminal justice and related degrees. There are too many examples of people being recruited who have racist instincts – this needs to be screened out (e.g. – that Justin Newsom made it to top leadership reflects on the type of people they are bringing into the department).

  - There are six HBCUs in Texas that produce over 100 criminal justice degree graduates per year.
  - The City should allocate some budget for scholarships at these schools in exchange for a 4-year commitment at APD.
  - Officers that come in with a 4-year degree are less likely to use force and more likely to productively engage with the community.
- Chief Manley had said he would bypass people when making appointments to leadership positions to increase diversity and accountability – but when he had the opportunity to do so, he used his optional bypass authority to promote people with little interest in increased accountability.
  - There remains a lack of diversity within APD leadership at the highest ranks. For example, unless there has been a recent change, there remain no Black Commanders.
- HR practices need to be looked at – inequity is built into the system.
  - If Black and Brown officers are not getting into the higher ranks, there is a problem of inequity.
- Even though APD officers have the option in many cases to give a ticket or citation vs. arrest, they are arresting Black and Brown people disproportionately.
- Chief Manley had become increasingly intransigent against council directives, and APD has essentially ignored council resolutions. “We have lost trust and faith in APD and the city’s ability to do anything about it.”
- APD should prioritize the candidacies of women – good outcomes come with female leadership.

Officer Discretion

- APD officers frequently ignore the body camera policy – officers often don’t turn the camera on or come up with other excuses (e.g., camera broke). “If we can’t trust officers to turn on their body cameras, how can we trust them on other things?”

Allocation of Resources

- The department needs to shift its approach and work with other agencies in certain situations – EMS, fire department, social workers – not every issue requires a traditional police response.
- The “core of everything” for reimagining policing starts at the training level.
- Several community members commented positively on recent changes to 911 calls – i.e., removing mental health calls from APD’s function – this is a step in the right direction.
- As of June 2020, APD had successfully diverted hundreds of calls from 911 police response to other agencies (80-85%) – but in that same period, there were over 3000 calls to 911 with a mental health component. The police do what we ask of them – which, unfortunately, is everything.

Reimagining Public Safety Task Force Feedback

Task Force Member Brion Oaks motioned to have a level of demonstration or proof from APD that the various areas have been addressed in the Academy, including:

- The killing of residents by police (use of force issues) [This issue will be addressed in Phase B of Kroll’s evaluation].

- The graduation rate for Black cadets and rate of disproportionate injuries to Black cadets in the Academy [This issue is addressed in Kroll's report].
- The overall injury rates in the academy training [This issue is addressed in Kroll's report].
- Addressing the video curriculum issues [This issue is addressed in Kroll's report].
- Racial profiling (stop, searches, arrests) [This issue will be addressed in Phase B of Kroll's evaluation].

Questions from March 23rd Community Forum

During the community presentation and forum that was hosted by the Office of Police Oversight on March 23, 2021, there were a number of insightful and engaging questions presented to Kroll concerning its preliminary findings and recommendations. The questions are reproduced below. Kroll's initial attempts at answering these questions can be viewed at the following link: https://www.austintexas.gov/blog/community-provides-feedback-apd-recommendations

1. *Did you interview people with lived experience with the police?*
2. *Can you define "adult learning?"*
3. *Will integral care be integrated?*
4. *What were the orgs under refugee and immigrant outreach?*
5. *There was a statement indicating that the recruiting unit has "significant diversity" and the numbers showed 17% female members, and 83% male members. How is the identified as "significant diversity"?*
6. *How many weeks of crisis intervention training are considered "best practice"? What are examples of cadet academies nationally that institute those best practices?*
7. *Can you speak a little more to the "warrior" and "guardian" discussion, and how a department can maintain a 30% warrior without over emphasizing the most unusual situations and undermining how officers behave in common interactions or in first amendment protected activity (where the vast majority of folks are peaceable).*
8. *If this report is preliminary, what has yet to be reviewed and finished before the full report comes out in April?*
9. *To what extent, if any, will the academy incorporate the principles of the Center for Policing Equity in its training?*
10. *Why has the length of the academy been shortened?*
11. *Does Community Policing fit into your recommendations?*
12. *Will no knock raids be either eliminated totally or at least eliminated for drug related cases?*
13. *Will the instructors that have perpetuated the militaristic US V. THEM mentality be removed and replaced with instructors that have demonstrated ability to train in the reimagined ways?*
14. *Which recommendations related to the academy and to the department, as a whole, would you all say would need to be solidly in place before Kroll would feel confident about the training academy resuming?*
15. *Are there any vestiges, even subtle, of the Grossman "killology" school of police training in the academy curriculum? If so, is there an active plan to remove them?*
16. *New cadets are the people with likely the least power in the department. What measures will be taken to ensure that this training translates into long term change in the department when new cadets will be poured into an academy culture that has been built on an entirely different framing of training*

and operating. How can we have faith that the changes will be welcomed by those who have been operating in a completely different modality?

17. What will be done to ensure that 'diversity' includes people with disabilities?

18. What consideration has been given to the vetting and retraining of all current officers before having a new cadet class, so that they don't undo any positive training new cadets receive?

19. Are the Beyond Diversity/Groundwork trainings short term trainings or ongoing investments in change within the culture, and are they department-wide, or just for cadets?

20. The report indicates that Kroll found "APD reluctant to incorporate a lot of community/civilian input and distrustful of non-police personnel." Given this culture, how can community input be meaningfully incorporated if there's a culture of mistrust of civilians?

21. Why do you not include other identities when mentioning "diversity"? It is not just race or gender.

22. Other countries have police "universities" that take 1- years to complete. Any thoughts to aspiring to a model like that?

23. Will existing trainers and educators in the Academy go through a long-term retraining on the new curriculum before engaging in leading trainings again? How will their success in incorporating the training be measured?

24. What is the relationship between transforming training and making significant changes to general orders and other systems of accountability for racial profiling, violence, and other misconduct?

25. Does the academy solely train officers for APD or do smaller agencies throughout the region send cadets here, too?

26. Many of us have experienced this reluctance directly. Do you believe that accepting community input can produce better curriculum?

27. How many people that have been arrested by APD did you involve in this assessment?

28. Does the academy address the issue of officers not feeling comfortable reaching out for psychological help, out of fear of stigma/damage to career?

29. Can an assessment of the Academy truly be complete without completing all phases of the evaluation since instructors and culture play such a huge role in how the cadet class is incorporated and led into the larger department?

30. Will all the phases of your evaluation and recommendations be complete before the council makes a decision on timing for the next academy class?

31. How long will the Academy be trained in "Adult Learning" before implementing a new cadet class?

32. you speak to the lived experience with arrest, detention, and/or incarceration of any of your advisory experts?

33. Will academy curriculum reform efforts also examine how disability is treated? There is a federal lawsuit by a deaf person alleging he was mistreated.

34. How will any cultural changes within the department be measured and determined and who will be making those determinations?

35. What outreach is being done to the Austin Texas disability community to build and maintain community policing?

36. How was the time period of two weeks chosen for the program for cadets to immerse themselves into the community? How would this work logistically? how would they be immersed into community programs and organizations?

37. What is the relationship between transforming training and making significant changes to general orders and other systems of accountability for racial profiling, violence, and other misconduct?

38. Will all the community questions here be catalogued/archived for reference by the City?

39. *Will the answers to all the questions in the chat be made public?*

40. *How much time do cadets in training watch body cam footage of interactions gone wrong?*

41. *If the goal is to completely transform the impact that police are having on the community, how can we move forward if the recommendations do not yet include the perspectives of community members who have been most directly impacted by policing in this process? For example, the statement made earlier that immigration is a separate issue from policing completely ignores the impact that the threat of deportation from any arrest has on immigrant communities. I share Melissa's sentiments made above and have also spoken with many people who have experienced trauma and life altering harm from interactions with police, and not exclusively around mental health issues. System transformation significant enough to address these issues cannot even begin to happen within a period of two months.*

42. *How can a cadet class begin before the phase about accountability measures? As one community member pointed out in a Reimagine Public Safety Task Force meeting, an officer who got angry and confronted the Chief during a city council meeting would not be keeping his job, but officers who kill and maim community members have consistently kept their jobs. If cadets come into a department with this culture without changes in accountability policies, and learn from officers currently in the field, how will they get the message that these kind of interactions with the community will not be tolerated?*

43. *Given that we're reallocating funds and roles, how can a shortage of police right now be more urgent than getting the transformative change pieces in place in APD first?*

Community Feedback on Reimagining Public Safety Task Force Website

On March 16, 2021, the Reimagining Public Safety Task Force published an abbreviated list of Kroll's preliminary short-term and long-term recommendations and sought community feedback and input on those recommendations. The recommendations listed were articulated as follows:

SHORT TERM RECOMMENDATIONS

1. *Transition to a blended civilian/police academy.*
2. *Create an academy curriculum review committee that includes community members.*
3. *Formalize the process for review of videos shown at the academy.*
4. *Create a model for academy and expert community subject matter experts to teach courses together.*

LONG TERM RECOMMENDATIONS

1. *Develop strategies to enhance long term racial, ethnic, and gender diversity of academy staff and faculty.*
2. *Implement two-week community engagement program for cadets.*
3. *Provide continuous de-escalation training for cadets and current officers.*

Many of the comments submitted were once again insightful and thoughtful. Although some of the comments suggested that the commenter was unaware that the list of recommendations posted included only a small number of the total recommendations and that Kroll's assessment was still underway, most comments were positive on the recommendations provided but noted correctly that many other factors must also be considered. The following link provides all of the comments posted:

https://www.speakupaustin.org/reimaginingpublicsafety/forum_topics/apd-training-academy-recommendations

7 APD TRAINING ACADEMY – RECOMMENDATIONS

As noted in Section 5, the APD has implemented a number of changes to address issues previously raised by the City, the community, and independent consultants. The Academy has made significant strides in diversifying its leadership and instructors to better reflect the community APD serves, although it has more work to do at the instructor level. The group of leaders and instructors presently at the Academy are highly professional, passionate about what they do, and genuinely interested in making the Academy a best-in-class institution.

That said, APD historically has been reluctant to incorporate adult learning theories and modern teaching methods into much of its course content, and an even stronger reluctance to change the paramilitary nature of the Academy in any fundamental way. As noted in Section 6, the relationship between APD leadership and certain segments of the community remains tense and broken, with several community activists expressing an unwillingness even to engage with the former Chief. As with many police departments across the country, the police professionals feel like they are under constant attack and not given credit for much of the good work and public service they do, while the many and varied community voices most engaged in criminal justice and police reform efforts feel disrespected and unheard.[225]

But there are moves in the right direction. First, creating the Organizational Development and Training Manager (ODTM) position, so that an educational expert can review the curriculum and work with instructors to develop ways to incorporate creative adult learning strategies into the training, was a proactive, positive initiative that should pay long-term dividends. Moreover, making the new ODTM a Division Manager, if backed by leadership, will help transition the Academy into a true adult-learning educational institution. Second, the collaborative work between APD and the Community Video Review Panel, while difficult and turbulent at times, ultimately produced an excellent example of police-community collaboration that can and should form the foundation of future relationship building between APD and the citizens it serves. Kroll knows of no other academy in the United States that has evaluated its training videos for instances of bias and inappropriate content in this manner. Third, adding 30 hours of community input and participation in cadet training, and the addition of course content such as The History of Policing and Race in America to be co-taught by a locally-based subject matter expert, further demonstrate a commitment by APD to improve its community relationships and train cadets in a manner more attuned to the community policing, guardian model that the City and the community desire.

There are additional and necessary measures to be addressed in the short run, including teaching methods and incorporation of adult learning strategies, substantive course content, community engagement, input and participation, and increased use of civilian content experts. Other more fundamental issues, such as significant changes to Academy culture, philosophy, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run with existing leadership, fundamental change cannot realistically be expected to happen overnight.

For these reasons, we have divided our preliminary recommendations into short-term and long-term measures, as noted below.

[225] Kroll notes that former Chief Manley had expressed to Kroll a willingness to engage with the community despite resistance from some vocal community activists. Additionally, the Acknowledgement section of the Joyce James Consulting Report commended the willingness of the Chief and his command team, and other sworn and civilian staff, to engage in open and honest dialogue that her team facilitated about institutional and structural racism. This would appear to be a step in the right direction for APD to begin honestly addressing racism institutionally.

KEY RECOMMENDATIONS

7.1 Short-term Measures

To begin addressing concerns expressed by the community and the findings, analysis, and recommendations of the reports and assessments conducted to date, and based on our best practices research in Section 4 and our findings in Section 5, the following steps should be completed before the start of the 144th cadet class:

1. It is imperative that the new Division Manager have a clearly articulated mandate to lead Academy instructors in (a) incorporating adult/active learning models throughout the Academy – specifically as to the DEI-related courses examined in this report and in Dr. Ferguson's Level I and II recommendations in his April 2021 report, and (b) implementing the recommendations of Dr. Villanueva's Review Analysis and Strategic Plan report of May 2020, pages 10-11. While we commend APD and the City of Austin for hiring Dr. Anne Kringen as a Division Manager to replace the prior Organizational Development and Training Manager, we learned that there was significant friction between sworn Academy staff and the ODTM position this past year. APD leadership needs to make clear that Dr. Kringen speaks on behalf of leadership.

    - At the same time, APD Command staff needs to accept ultimate responsibility for implementing these recommendations and transitioning the Academy to a resiliency-based training model. This is not something that can be delegated exclusively to the Division Manager.

2. The Academy should also, as soon as practicable, hire and onboard a Training Supervisor to work with the Division Manager in updating and standardizing curriculum and support materials to better reflect adult and active learning strategies. This added position will eventually help transition the Academy to a blended civilian and police-led training academy with outside civilian instructors and APD Academy instructors teaching cadets individually or jointly as appropriate for the course content.

3. APD should expedite the procurement process to begin implementation of an automated Learning Management System (LMS) that will facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work, and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class.

4. The Academy should formalize an internal review committee responsible for reviewing each instructor's syllabi and curriculum and suggesting ways to improve each class in the Academy. (We understand that Dr. Kringen is currently forming an Academy Curriculum Review Committee for this purpose). The committee should include the new Division Manager and soon-to-be-hired Training Supervisor, along with selected Academy supervisors and instructors, and outside academic and community representation. The panel could start with reviewing and evaluating video presentations of the training that is intended to be presented to the next cadet class.

- With the assistance of the Division Manager and the Training Supervisor, and in coordination with the Commander and Academy supervisors, all course content, including courses taught by the Learned Skills Unit and Cadet Training Unit, need to be evaluated for ways to incorporate DEI content into all aspects of training. The current siloed approach, which essentially isolates DEI courses from police tactical training, should be modified to ensure consistency of messaging and a fundamental emphasis on the humanity and complexity of the citizens APD serves and protects. "Checking the box" once a course is completed needs to be resisted. Teaching about multiculturalism and the importance of community relations in week one will be undermined if we then train "warriors" to counter all threats in later weeks. All courses should be reinforced, formally and informally, throughout the cadet training program.
- Cadets must be thoroughly and effectively trained on all proper defensive tactics, arrest and control techniques, crowd control, and so on. But the messaging throughout the Academy needs to consistently emphasize the ethical responsibilities of policing, teach a sensitivity to legitimate community fears that are based in history, and recognize the complexity and nuance of the human beings that cadets will interact with daily. Cadets must understand that more than 95% of day-to-day policing is more akin to social services than policing. The single most important skill that a police officer can develop is the ability to effectively interact with and relate to a diverse community of people in ways that are honest, authentic, and transparent. Implicit messages, whether from training videos or course content, suggesting that certain people or neighborhoods are more "dangerous" than others, must be resisted and countered.

5. APD should put in place a formal process to continue a community review of police training videos that were not reviewed previously by the recently concluded Community Video Review Panel. Once a process is formalized, ongoing consultation should occur between APD and the community panel concerning any new training videos proposed for use in future training courses to ensure that full community input is embedded into Academy planning and implemented in training. It is important, however, that videos are reviewed in the context in which they are to be taught, and not in isolation. To accomplish this, the panel must have the benefit of one or more instructors to explain how the video is intended to be used and in what context.

6. "Will-to-Win" (previously known colloquially as "Fight Day") should become a highly-regulated "Self-Defense" exercise near the end of Academy training, after cadets have been properly taught and tested on all appropriate defensive tactics, hand-to-hand encounters, and similar tactics.[226] This "Self-Defense" session should be video recorded (for internal review only) to ensure that appropriate levels of force are being used by the assigned instructor according to Academy protocols. We understand and agree with the need to prepare cadets for aggressive and hostile encounters, but "Will-to-Win" sends a message that implicitly affirms the "us vs. them" mentality that must be eliminated. It is one thing to properly prepare cadets for certain types of encounters and giving them the tools to protect themselves, but another thing to message that the object in hostile encounters with a member of the public is to "win" – which implies that someone must "lose." Officers must be trained on how to properly protect themselves and others, but proper messaging is crucial to ensure that the training exercise does not overtake the fundamental purpose of policing.

[226] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

- Kroll recommends a defensive tactics program that has cadets learn the basic skills starting early in the Academy, where cadets work with instructors and other cadets to learn proper defensive tactics before they are tested near the end of training, either with a controlled/supervised period of time in a ring or other scenario-based training. This will assist in team building and allow cadets to learn and build the skills to succeed.
- APD spends hundreds of thousands of dollars to recruit and conduct background investigations of cadets. Accordingly, every effort should be made to have cadets succeed by giving them the tools to do so. To reduce injuries, self-defense testing and challenges should occur after fitness training when recruits are warmed up and stretched out.
- Ensuring use of the phrases "defending oneself" and "self-defense" will also help address the "warrior vs. guardian" issue.

7. The use of the sandpit and having cadets carry sandbags as punishment for "messing up" should also be modified or eliminated.[227] The shift from stress reaction training to team-building exercises is a positive development; team-building exercises are important and necessary, as are physical fitness and conditioning. We understand that there is a certain level of physical and psychological stress associated with policing and with training. But the old-school manner of incessantly yelling and screaming at cadets, and other humiliation tactics, serve little purpose other than to instill a military-like, bootcamp atmosphere that is counterproductive to preparing officers to serve as guardians of the community.
8. The Academy should expand its physical fitness training to a daily regimen and this training should be separated from all academic content – except for physical training associated with self-defense and other defensive tactics.
    - Physical fitness, team building, and applying stressful situations to cadets should be completely separated from any academic training. Having cadets do extra pushups, sit-ups, and other exercises while properly attired in athletic gear during formalized physical training programs (when cadets have properly stretched and warmed up) will reduce injuries. The academic learning environment should be free of physical and unnecessary psychological stress. The rigors of learning coursework are stressful enough. Instead of carrying around sandbags for mistakes or shortcomings, for example, cadets could be required to write an administrative report about their failure and how they plan to address it. This will incentivize cadets to correct their mistakes while helping develop the skill most officers will spend considerable time doing throughout their careers (writing reports), while also documenting a non-subjective review of the cadet's progress.
9. As part of its community engagement programming, the Academy should proactively reach out to a wide variety of community leaders and activists who are willing to work productively with APD in presenting genuine community perspectives and concerns about public safety. This should include some of the department's harshest critics and other community voices with which APD has not traditionally engaged in active dialogue. This sort of community participation can be a mutually beneficial exercise that begins to slowly break down barriers of communication and enhance the learning experiences of the cadets. It is important to include the voices of some of the department's harshest critics among the invited participants in this programming.

[227] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

10. To its credit, the Academy has scheduled "The History of Police and Race in America" that includes a specific focus on Austin into the 144th cadet class curriculum and is in the process of arranging for a locally based subject matter expert to co-teach the course with an African American APD sergeant. APD should ensure that the course covers the content outlined in the OPO-approved curriculum and is reinforced in other courses throughout the Academy.
11. The Academy should explore ways to implement additional community outreach and immersion strategies, such as having cadets spend time in a food pantry or homeless shelter, attend community meetings out in the neighborhoods, meet with local community leaders, and spend time visiting mental health and substance abuse programs.
12. The Academy should thoroughly review all other DEI-related courses and determine which may benefit from an outside, more academically oriented civilian content expert or a community perspective. Most of the DEI courses can be taught more effectively pursuant to a co-facilitation model that includes input and perspectives of civilian instructors or community members in the design and delivery of the training. These courses should be co-taught by APD instructors in cooperation with appropriate subject matter academic experts or community allies who can provide direct community examples, round out perspectives, and foster valuable community partnerships. It is important that the people presenting in these courses have credibility with both the community and law enforcement.
13. APD should tap into the resources of its existing officer base to temporarily assign some diverse officers of exceptional skills to assist with Academy instruction, particularly in courses where a diverse perspective would be beneficial and worthwhile (one of the recurring criticisms of the cadet surveys conducted by Dr. Ferguson was that the Academy often had non-diverse instructors teaching classes like multiculturalism and cultural diversity). For example, there is currently a diverse pool of officers in the Recruiting Unit who know and have existing relationships with cadets and who, with some additional training, could potentially supplement training staff and enhance the diversity of instructors teaching these courses.
    - Academy instructor recruitment could also be expanded to target experienced instructors from other police departments and talented individuals from local community organizations. Emphasis should also be placed on recruiting women, members of ethnic minority groups, and other underrepresented populations. This would help the Academy assemble a faculty that better resembles the demographic background of cadets and the diverse community the APD serves.[228]
14. The Academy should incorporate anti-racism and cultural diversity training into the Academy curriculum and as part of annual training for Academy instructors and supervisors (and eventually all officers). There are several valuable workshops and programs that could be utilized, including Beyond Diversity by Dr. Glenn Singleton and the Groundwater Analysis training workshop by Joyce James Consulting LLC that some APD leadership and Academy staff attended in 2020.
15. The Academy should reinstitute the practice of following-up with a cadet who leaves the Academy for any reason. The recruiter who had developed the relationship with the cadet might be able to identify an opportunity for the cadet to return to the Academy in a later class if circumstances allow. It also provides an opportunity for feedback to identify any changes needed in the training or recruiting process to ensure future success.

[228] Dr. Miguel Ferguson, Austin Police Department Training Academy Curriculum Review (April 5, 2021), 8.

16. The Academy should develop a mentorship program for all cadets, especially recruits of color, that will provide additional support for cadets and help them succeed at the Academy. These efforts would assist Commander Johnson with her stated desire to see Academy staff become more supportive and encouraging in helping all cadets succeed.
17. The Academy should revise the lesson plans and course content addressed in our review and recommendations of courses related to cultural competency training on pages 55 to 66 of this report, as well as the related Level I and II suggestions contained in Dr. Ferguson's curriculum review report of April 5, 2021.
18. The City should require an ongoing, independent review of the Academy by an outside evaluator once the 144th Academy class begins to ensure implementation of the above recommendations and to help ensure that further adjustments and improvements are made moving forward.
    - Kroll understands that many would like to see a completely revised training program that has addressed all issues before another class starts. We caution, however, that until instructors are actively training recruits, it will be difficult to fully assess whether the changes and recommendations currently being made or adopted are sufficient.

7.2 Long-Term Measures

To address some of the cultural and attitudinal concerns expressed by the community leaders we spoke with, and as outlined in the Community Video Review Panel report, Equity Assessment report, and the other consultant reports addressing APD training, we recommend the following:

1. To build on the positive collaboration between APD and the community in evaluating for bias and other inappropriate content in APD's training videos, APD and the City should consider working with a professional media literacy educator to help develop effective teaching videos moving forward that will have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy, and behavior. While it's one thing to analyze what one sees and hears, it's another thing to develop effective teaching videos as tools to undo ingrained bias, worldviews and attitudes that we all are born into, and how we have come to "interpret" living realities. It will take real knowledge and skills to overturn what is so embedded in the recruits that come to the Academy. This will be true regardless of race, gender, or class status.
2. APD should develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level, to increase the number of African American, Hispanic/Latinx, Asian/Pacific Islander, and female instructors assigned to the Academy prior to the start of the 145th Academy.
3. Academy class schedules should be revised to eliminate 40-hour blocks of course content to such things as Penal Code, Traffic Code, and Arrest Search and Seizure. These courses should be spread out over the length of the Academy, so that no more than two to four hours per day, three days a week are devoted to these important, but often dry and legally important subjects. Cadets need the opportunity to study and absorb the material that is taught, with an opportunity to ask questions and be tested in a progressive, cumulative manner. A revised schedule would also help combine the different course learning objectives into scenario training, which can prepare officers to apply their knowledge to patrol duties on the street. This type of training schedule has been used by numerous academies successfully to increase cadet graduation rates in Boston and other locations.

4. Based on Kroll's initial review, we have learned that the physical fitness requirements at hire may not be predictive of the physical fitness requirements in the Academy, and the physical fitness requirements in the Academy may not positively correlate with the physical fitness requirements of police officers post-graduation. For example, we have been told that many female applicants pass the initial physical fitness test and many African American male applicants fail the initial physical fitness test, yet both of these groups seem to struggle with the physical fitness requirements at the Academy. We also understand that there are essentially no physical fitness requirements of police officers once they have graduated from the Academy. As such, further analysis and adjustments of these relationships are required to ensure that pre-Academy, Academy, and post-Academy physical fitness standards are consistent with successful job performance. These potential inconsistencies lend further credence to Kroll's suggestions about physical training requirements and sequencing at the Academy, although this will only partially address questions about the physical fitness required by APD.
5. The Academy should develop a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to officially starting at the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.
6. Although we understand that the ICAT training has been adopted by the department as required in-service training for all sworn personnel, APD should require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. Departments that have widely adopted and implemented ICAT in other parts of the country have seen a marked decrease in use-of-force incidents.
    - Up-to-date de-escalation training needs to be delivered department wide, reinforced through use-of-force policy, supported by field supervisors, and included as a component of use-of-force reviews. Without a holistic approach, training in the academy will be "undone" once cadets graduate and are in the field.
    - We also recognize the importance of the Community Video Review Panel (Panel) recommendations to this training. Some of the videos used in the Academy's existing ICAT training were offensive to the community because it reinforced stereotypes involving Black women and communities of color overall. PERF emphasizes that ICAT training is flexible and adaptable, encouraging that agencies be creative in how they incorporate the training modules into new or existing programs on de-escalation, tactical communication, or crisis intervention. Many agencies use different videos and scenarios that better fit within their organizational and community context. These videos could easily be changed without losing any training content.
    - The ICAT training provides comprehensive instruction on critical thinking, crisis recognition, tactical communications, continual assessment, and scenario-based training. As the Academy is in the process of implementing the Panel's recommendations regarding use-of-force videos, once there is a consensus among the Panel that the videos used are gender and racially appropriate, it will enhance the existing ICAT curriculum and provide an appropriate equity lens to APD officers during de-escalation training.
7. To promote instructor wellness and avoid burnout, low morale, and reduced job performance, there needs to be some recovery time built into the intervening period between cadet classes. We recognize police departments always strive to reach their complement of newly sworn officers, but

it is important to be mindful that instructors have little downtime from teaching between the end of one cadet class and the beginning of another (see Dr. Villanueva report, page 9).

8. Whereas studies have shown the effectiveness of procedural justice training programs (see Section 4, pages 17-18), APD should develop additional content to further emphasize the importance of procedural justice in its training. While the History of Police and Race in America covers historical abuses that have undermined public legitimacy, and while Professionalism and Ethics and Fair and Impartial Policing teach principles related to procedural justice, the Academy should consider covering these concepts in further detail, either by developing a separate course or adopting one already proven successful, like the Chicago Police Department's procedural justice training program.

9. While Kroll's analysis of APD's CIT training acknowledges the department's effort and successes in addressing concerns of inadequate responses to behavioral and mental health crises, APD should collaborate more extensively with outside mental health advocacy and treatment organizations to ensure a more holistic approach to mental health responses and allow responses to crises that do not involve law enforcement, whenever possible. Moreover, pursuant to the recommendations in the 2018 Office of the City Auditor Report,[229] the Meadows Institute Report,[230] and the University of Texas Report,[231] Academy training should increase its emphasis on reducing stigma of mental illness among officers and require regular refresher courses on CIT principles.

10. APD's General Orders on Duty to Intervene covers some basic tenets of peer or bystander intervention requirements. However, APD should continue research into effective peer intervention training programs like Ethical Policing is Courageous (EPIC) and Project ABLE (see Section 4, pages 24-25), and consider adopting these or similar programs to place a more thorough emphasis on the importance of dismantling 'the blue wall of silence'.

11. Whereas police training research has increasingly noted the importance of cognitive decision-making, emotional intelligence and regulation, and effective social interaction skills, Academy leadership should continue to research ways in which these topics can be covered in the Academy curriculum. We recognize that the Academy is already taking steps towards this end, investing in leadership training using emotional intelligence and updating psychological assessments according to up-to-date best practices.

FTO Program Recommendations: The following recommendations will serve to strengthen the FTO Program and address several of the concerns raised by the City of Austin and the community.

12. APD and the Academy should consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers. A common problem in many police departments is that, once certain practices are taught in the Academy, the new officer learns a "different way" of doing things on the street. This undermines what is taught at the Academy and compromises an academy's efforts in staying up to date with best practices and any positive reform measures implemented at the cadet training level.

13. To highlight the importance of the FTO Program and encourage the best candidates, additional incentives should be provided for participation as an FTO. Although officers who serve as FTOs

[229] Office of City Auditor, "APD Response to Mental Health-Related Incidents".

[230] The Meadows Mental Health Policy Institute for Texas, "Recommendations for First Responder Mental Health Calls for Service".

[231] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings".

are provided incentive pay for their service, the program should also include other incentives, such as special uniform insignias, administrative leave days, and priority when it comes to selection for training opportunities.

14. The APD Field Training Officer Standard Operating Procedure should be amended to require the Field Training Program Coordinator and Academy staff to conduct focus groups with randomly selected trainee officers midway through the field-training cycle, as well as upon completion of field training and again six months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties. The focus groups should be designed to elicit issues encountered in the FTO program and to ensure that inconsistencies in training are identified and rectified.

    - Example of Focus Group Session Finding: *During X focus group session, the trainees found issues/no issues or discrepancies between Academy training and their FTO training. Trainees suggested that the training program should include more use of force option scenarios, as well as a new scenario where the trainee completes the entire call, including detention, report, stop data, and use of force report.*

15. *Consistency of Training*: The results of the above-noted focus group sessions should be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, and the affected Deputy Chief. If it is determined that there are any substantial discrepancies between what is taught in the Academy and what is taught in the FTO program, a determination should be made as to which is correct, and either the Training Academy or the FTO program should make the necessary changes so that the desired training information is consistent. If the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program, the review group should determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group should be documented and the information provided to the Chief of Police.

16. *Recruiting and Re-commissioning Combat Veterans*: APD should develop a protocol for psychological debriefings that address issues faced by combat veterans returning from military deployments to help reintegrate them into their law enforcement duties. Additionally, the strategies and resources employed should be extended to recruits that were recently discharged from the military to assess their mental health suitability for police employment prior to an appointment to the Academy. These resources should be used to assist military veterans' transition from military deployment to civilian law enforcement duties and help reprogram them concerning the proper use of equipment and tactics in domestic, community policing environments. The International Association of Chiefs of Police, in collaboration with the Bureau of Justice Assistance, U.S. Department of Justice, has published a *Law Enforcement Leader's Guide on Combat Veterans: A Transition Guide for Veterans Beginning or Transitioning to Careers in Law Enforcement*, which is a helpful resource for law enforcement leaders.[232]

[232] https://www.theiacp.org/sites/default/files/2018-08/LeadersGuide_300dpi.pdf

8 APD IMPLEMENTATION / ACTION PLAN

On February 16, 2021, Kroll shared with the City and APD a set of preliminary findings and recommendations concerning our assessment of the APD Training Academy. Kroll's recommendations included a set of short-term and long-term recommendations, with the short-term recommendations to be implemented in time for the 144th cadet class. It was understood that the long-term recommendations would require additional time to implement, although they should all be achievable, or nearly so, by the start of the 145th cadet class.

The recommendations reviewed by APD in February, and presented to City Council on March 2, 2021, are largely the same as those outlined in Section 7 of this report. We have since added a short-term recommendation (number 17 concerning revising and updating Academy curricula on cultural competency training consistent with our comments on pages 55 to 66) and some additional long-term recommendations needed to (1) enhance the Field Training Officer Program and (2) close perceived gaps between Academy operations and national best practices in police training described in Section 4 of this report.

To its credit, APD leadership agreed to implement all of Kroll's recommendations. Meanwhile, Academy staff has worked diligently to begin implementing the recommendations. This has required substantial re-working of the course schedule for the 144th cadet class, which prior to Kroll's review was a planned 26-week training program that eliminated all but what APD deemed essential content to meet state mandated certification requirements and to train cadets on important tactics. The revised schedule details a 34-week program, which includes a two-week community immersion orientation program and 32 weeks of Academy training.

As a result, the planned Academy training program for the 144th cadet class now includes (1) 30 additional hours of community engagement programming (for a total of 37 hours), (2) a two-week community immersion orientation program, (3) a full day of Groundwater Analysis Racial Equity training for both Academy staff (prior to the start of classes) and cadets (as part of Academy curriculum), (4) a newly designed 8-hour course on the history of police and race in America to be co-taught with a local academic subject-matter expert, (5) near daily physical fitness training, (6) fewer week-long blocks of technical course content that will allow for more effective implementation of adult learning strategies, and (7) a formalized process of community input into, and academic civilian oversight of, training content and techniques to ensure that issues of racial equity and procedural justice are paramount considerations in all aspects of cadet training.

The below chart summarizes our present assessment of APD's efforts to implement and incorporate short-term recommendations prior to the start of the 144th cadet class, and APD's action plan and proposed timeline for implementing all recommendations (short-term and long-term) moving forward.

#	Short-Term Recommendations	APD Responses / Action Plan
1.	Provide the new Division Manager with sufficient authority and the backing of APD leadership to implement and incorporate adult and active learning models into Academy instruction and to implement recommendations on pages 10-11 of Dr. Villanueva's Review Analysis and Strategic Plan.	*Completed.* APD hired and onboarded Dr. Anne Kringen on March 15, 2021, and made her a Division Manager, a civilian equivalent to Commander. This was affirmed by Interim Chief Joseph Chacon and Assistant Chief James Mason on March 30, 2021 at a meeting with Academy staff. Dr. Kringen is currently working with instructors to update curriculum to include active learning strategies and content, with a plan to complete all updates before the start of the 144th cadet class. Dr. Kringen will report any issues directly to Executive Staff.
2.	Hire a Training Supervisor to assist the Division Manager in updating and standardizing curriculum according to the adult and active learning models.	*In progress.* Reclassification from a Training Specialist to a Training Supervisor was approved and finalized during the first week of April. APD has since posted the position and received 10 applications to date.
3.	Procure and implement an automated Learning Management System (LMS) by the start of the 145th cadet class.	*In progress.* Two vendors for LMS have been selected and are currently being evaluated by APD. A second round of demonstrations will be conducted by mid-April, after which a final contract will be negotiated. APD expects full implementation of an automated LMS by October 2021, prior to the start of the 145th cadet class.
4.	Create an internal curriculum review committee to evaluate current syllabi and curriculum for each class. a. Evaluate for ways to incorporate DEI content into all aspects of training. b. Ensure that messaging throughout Academy training consistently emphasizes the ethical responsibilities of policing and a sensitivity to community concerns.	*In progress.* Dr. Kringen is establishing an Academy Curriculum Review Committee and has provided Kroll with a preliminary list of committee members. The current list of confirmed and potential members includes two APD sworn personnel, two representatives from local academic institutions, one or two staff members of Victim Services, three community representatives, and one or two members of the Community Video Review Panel. The Division Manager is currently reviewing curriculum for DEI content inclusion. All classes will be reviewed prior to the start of the Academy, with a completion due date of May 31, 2021.
5.	Establish and formalize a process to continue the work of the Community Video Review Panel (Panel) to allow for regular community review and input into police training videos that were not reviewed previously.	*In progress.* All videos flagged by the previous Panel are in the process of being replaced if an alternative is available. Where replacement videos have not been identified, Dr. Kringen has been provided the authority to replace such instruction by other adult learning means. The previous Panel met with Dr. Kringen on March 31, 2021. Next steps included introducing Dr. Scott Bowman, who has agreed to serve as a new member, and finalizing committee members that want to stay on. The second Panel meeting occurred on April 20, 2021. The new Panel will meet regularly thereafter pursuant to the formal process. A panel member is also scheduled to meet with Academy instructors on April 28, 2021, to better understand staff perspectives.

6.	Replace "Will-to-Win" with a "Self-Defense" exercise near the end of Academy training. **a.** Institute a defensive tactics program early in the Academy that teaches cadets proper defensive tactics before they are tested in aggressive fight scenarios. **b.** Testing and challenges should occur after Physical Training when recruits are warmed up and stretched out to reduce injuries.	*Approved (to be evaluated).* "Will-to-Win" has been replaced by a "Self Defense" exercise that will occur after cadets have been fully exposed to defensive tactics instruction. The current schedule shows this exercise occurring in week 23. Cadets will have previously received training in all aspects of defensive tactics, as well as communication, de-escalation, and community engagement. The lesson plan will be reviewed by mid-April to ensure proper implementation of this exercise. APD will ensure to emphasize "defending oneself" and "self-defense" to address the "warrior vs. guardian" issue and will ensure that cadets are properly warmed up and stretched to reduce potential injuries. The course curriculum will be reviewed to ensure messaging is consistent throughout.
7.	Modify or eliminate sandpit and sandbag exercises and other military-style punishments.	*Completed.* This practice has been eliminated as of Feb. 1, 2021, per instruction of APD leadership.
8.	Expand physical fitness training to a daily regimen and ensure that physical fitness, team building exercises, and other physically and psychologically stressful exercises are completely separated from academic, classroom-based training.	*Approved in part (to be evaluated).* APD has agreed to separate academic training from physical fitness, team building and other physically and psychologically stressful training exercises, and to place all physical fitness activities on the calendar. APD has incorporated daily PT into the calendar for the first 12 weeks of Academy training and scheduled PT for 3 times per week in the remaining 18 weeks of training.
9.	Proactively reach out to community leaders, activists, and critics who are willing to work productively with APD to present genuine community perspectives and concerns about public safety as part of Academy training and community engagement programming.	*In progress (insufficient at present).* Academy staff, with the help of OPO, has identified a preliminary list of community groups that they believe could assist in this effort. Dr. Kringen has worked with Academy staff to proactively research potential community partners, identify points of contact within each organization, and reach out to the various points of contact by email. Starting on April 19, 2021, Academy staff began evaluating responses from each organization to determine willingness to participate and potential topics of discussion that can provide added perspective to cadet training or existing course content. APD plans to have the individuals/groups identified by the first week of May.
10.	Ensure "The History of Police and Race in America" course covers the content outlined in the OPO-approved curriculum, and that this and other DEI-related content is reinforced throughout the Academy.	*In progress.* The "History of Police and Race in America" has been added to the curriculum and discussions are ongoing to finalize arrangements for a local academic expert to co-teach the class. The Division Manager and Academy Curriculum Review Committee will review other courses to ensure the information taught is reinforced throughout the Academy. This review is to be completed by May 31, 2021.
11.	Implement additional community outreach and immersion strategies.	*Approved.* APD has added 30 hours of scheduled time to focus on community engagement programming, including outside speakers from community organizations. APD also plans to have

		cadets spend time in a pre-academy environment working directly with Recruiting and District Representatives to meet this recommendation for the 144th Academy, in partnership with community leaders and organizations. The program will be finalized by May 31, 2021.
12.	Thoroughly review all other DEI-related courses to determine which courses can be effectively co-taught by an outside civilian or academic content expert with an APD instructor.	*In progress.* APD is working with the Equity Office and APD's Equity Manager on several areas of the Recruiting and Academy process. Dr. Kringen is working with Meme Styles of Measure to create a data course with APD's research and planning team. Other academics have been consulted to co-teach. These steps should be finalized by May 31, 2021.
13.	Use existing officer base to temporarily assign diverse officers of exceptional skills to assist with Academy instruction to increase diversity of Academy staff.	*On-going.* The Academy has reached out to the different affinity groups to help recruit qualified and diverse officers to fill the vacant positions as they occur. This will be an on-going process and positions will be filled as they become vacant. APD has agreed to utilize adjunct instructors to increase the diversity of current instructors.
14.	Incorporate anti-racism and cultural diversity training and workshops into the Academy curriculum.	*Approved.* APD has confirmed with Joyce James Consulting LLC that the Groundwater Analysis training workshop will receive TCOLE credit for Cultural Awareness. The contract includes training for the training staff, cadets, and all APD sworn and civilian staff. OPO is working with the Equity Office and APD to ensure that Academy staff takes the workshop prior to the start of the 144th cadet class.
15.	Reinstitute practice of following-up with a cadet who leaves the Academy for any reason.	*Approved.* APD has indicated that this practice shall become part of standard operating procedure. Dr. Kringen is reviewing the previous practice and reworking the exit interview process. Completion expected by May 1, 2021.
16.	Develop a mentorship program for all cadets, especially recruits of color.	*In progress.* A Women's Mentoring Group has been established and Dr. Kringen and staff are currently evaluating the lessons learned from this group, along with input from affinity groups, to determine how best to proceed with additional mentoring opportunities. APD plans to work with Joyce James Consulting to build a comprehensive mentoring program for all cadets.
17.	Revise the lesson plans and course content addressed in our review and recommendations of courses related to cultural competency training on pages 55 to 66 of this report, as well as the related Level I and II suggestions contained in Dr. Ferguson's curriculum review report of April 5, 2021.	*Pending Consideration.* Dr. Kringen is currently working with instructors to update Academy curriculum to include Kroll's recommendations (and the recommendations of Dr. Ferguson supported by Kroll). As of April 15, 2021, all 68 classes within the Cadet Training Unit have been evaluated under Phase 1, including incorporating an active learning activity in each lesson plan. All updates will be completed before the start of the 144th cadet class.
18.	Require an ongoing, independent review of the Academy by an outside evaluator once the 144th cadet class begins to ensure implementation of the short-term recommendations	*In progress*. APD is working with the City Manager's Office to implement this recommendation.

#	Long-Term Recommendations	APD Responses / Action Plan
1.	Consider hiring a renowned national leader in "media literacy" to help develop effective teaching videos that have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy, and behavior.	*Pending.* The Division Manager has been tasked with implementing a roadmap for this recommendation. She first needs to discuss internally to understand the CMO's expectations and budget.
2.	Develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level.	*On-going.* The Academy has already instituted several measures, including reaching out to the different affinity groups to help recruit qualified and diverse officers to fill vacant positions as they occur. This will be an on-going process and positions will be filled as they become vacant. Meanwhile, APD plans to utilize adjunct instructors as needed to increase the diversity of current instructors.
3.	Revise Academy class schedules by eliminating 40-hour blocks of dry but legally important course content for such things as Penal Code, Traffic Code, and Arrest Search and Seizure, as these courses should be spread out over the length of the Academy (no more than two to four hours per day, three days a week).	APD has split up Penal Code and Traffic Code for the planned 144th cadet class. At this time, the instructors do not believe that Arrest Search and Seizure should be split up. APD will closely monitor test scores to ensure that the cadets are effectively retaining their knowledge of Penal Code and Traffic Code.
4.	Further analyze the relationships between pre-Academy, Academy, and post-Academy physical fitness standards to ensure they are consistent with successful job performance.	*Pending.* TCOLE does not have any physical fitness standards post-graduation. For the past two legislative sessions, bills have been introduced with little success to set standards for officers (post-graduation). APD has been working for the past several years to set a baseline for physical fitness and will continue to move this project forward.
5.	Consider developing a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.	*In progress.* APD plans to incorporate a Community Connect plan beginning with the 144th Academy. The proposed plan will have cadets spend time in a pre-academy environment working in the community directly with Recruiting and District Representatives to fulfill this expectation and bring depth to the Academy experience. Further adjustments will be made if needed for future cadet classes.
6.	Require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. a. Reinforce training through use-of-force policy, ensure support of field supervisors, and include as a component of use-of-force reviews. b. Modify the videos shown in ICAT training to be consistent with Community Video Review Panel recommendations.	*Completed.* APD considers de-escalation one of the golden threads through which all Academy training is incorporated. This item has been completed; but it will continue to be a focus area of all future curricula reviews. In addition, the department plans to ensure de-escalation training is built into the mandatory in-service training. Before videos are used in de-escalation training, APD will make sure that they have been reviewed by the Community Video Review Panel.
7.	Build recovery time into the intervening period between cadet classes to promote instructor wellness and avoid burnout, low morale, and reduced job performance.	*In progress.* APD is working towards a schedule that allows sufficient time for academy trainers to refresh and not be overloaded with back-to-back classes.

8.	Develop additional content to further emphasize the importance of procedural justice in Academy training; consider developing either a separate course or adopting one already proven successful, like the course developed by the Chicago Police Department.	*Under consideration.* Through the History of Police and Race in America, the Academy covers the past actions of police that have undermined public legitimacy (which is part of the Chicago procedural justice course). APD plans to look further into covering the concepts of procedural justice as part of this course, the Fair and Impartial Policing course, or by developing a separate course for future classes.
9.	Build additional collaborations with outside mental health advocacy and treatment organizations beyond CIT training, and consider placing a greater emphasis on reducing stigma of mental health among officers either through CIT training or additional courses.	*Under consideration.* APD is in contact with members of the Baltimore Police Department (BPD), whose Collaborative Planning and Implementation Committee (CPIC) has worked to form relationships between BPD's training department and various behavioral health entities. APD plans to reach out to various stakeholders in Austin related to behavioral health for potential future collaboration.
10.	Continue research into effective peer intervention training programs like Ethical Policing is Courageous (EPIC) and Project ABLE, and consider adopting these or similar programs.	*Under consideration.* Currently, some of the basic information related to peer intervention is part of APD's General Orders on Duty to Intervene. However, APD understands from research into ABLE that the duty to intervene may not cover how officers can intervene. In the short term, APD is working with Proactive Alliance training, which includes a component of bystander training; instructors will receive the training in June 2021. Given the commitment to the 10 ABLE Standards and the need for restrict class instruction to 25 individuals or less, APD is continuing its research into the feasibility of this training for the department.
11.	Continue to research ways in which cognitive decision-making, emotional intelligence and regulation, and effective social interaction skills can be covered in Academy curriculum.	*Under consideration.* APD is investing in leadership training that uses concepts in emotional intelligence. Additionally, the department has updated its psychological testing platform to the newest version of the Minnesota Multiphasic Personality Inventory (MMPI)-3 as the standard psychological assessment tool for recruits. APD will continue to investigate and research exactly how to integrate these concepts into the basic Academy curriculum or the continuing education of officers' post-graduation.
12.	Consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers.	*On-going.* FTOs are required to attend annual refresher training at the Academy to remain current and up to date with respect to what is being taught in the Academy. The Academy has an FTO Liaison who works directly with FTO's in the field. Instructors are required to ride out in the field once a quarter to ensure that Academy training is in line with patrol operations and the FTO program.
13.	Provide additional incentives for participation as an FTO to encourage the best candidates.	*Pending consideration*
14.	Amend FTO Standard Operating Procedures to require the FTO Coordinator and Academy staff to conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six months after	*Pending consideration*

	completion to determine the extent to which the Academy prepares new officers for their duties.	
15.	Review the results of the above-noted focus group sessions with the Training Division Commander, the FTO Program Coordinator, and the affected Deputy Chief to ensure consistency between lessons from the Academy and lessons learned in the FTO program; document results and provide information to the Chief of Police.	*Pending consideration*
16.	Develop a protocol for psychological debriefings of APD combat veterans returning from military deployments to help reintegrate them back into law enforcement duties; assess recently discharged individuals' mental health suitability for police employment and assist military veteran recruits' transition from military deployment to civilian law enforcement.	*Pending consideration*

9 CONCLUSION

It is not possible to achieve perfection in policing or police training. The Austin Police Department and the APD Training Academy are human institutions, so building a long-term system of internal and external review of training methods and Academy effectiveness is essential to institutionalizing the search for excellence. Training police officers to become community-oriented, empathetic, compassionate, and resilient guardians of the public in a dynamic and diverse city, while promoting officer health and wellness, is a constantly evolving process. For this reason, police academies should be in a constant state of review and improvement. As noted in the CCJ Task Force:

> *Even if training programs are grounded in research and have been proven effective, training alone is not sufficient to prepare officers to police in a respectful, constitutional manner that comports with agency policies and prioritizes the preservation of life. Training should be accompanied by clear, detailed written policies and buttressed by engaged supervisors who model practices in accordance with training principles and agency policy – and hold officers accountable when they are out of compliance.*[233]

The recommendations outlined in this report are intended to be a springboard from which APD can continue to make a good department even better, one more attuned to the pulse of the Austin community and the demands of policing a diverse, vibrant, and progressive city in 2021. The old way of doing things no longer works. Genuine police reform is needed throughout the United States. It all starts with training.

Based on APD's efforts to date in implementing Kroll's short-term recommendations—as outlined in Section 8 of this report—and with the plans set forth by the Division Manager for achieving all short-term recommendations by May 31, 2021, we believe that a state of readiness for the 144th cadet class is achievable by this summer, or whenever reasonable as determined by the City Council and City Manager's Office. Although how effectively the Academy implements the recommendations outlined in this report will need to be independently evaluated once the Academy is up and running, there is no current reason to believe that this cannot be accomplished with the continued effort of APD leadership and Academy staff. Ultimately, the hard work of establishing a long-term foundation for a resiliency-based, guardian-centric, community-oriented police department has only begun.

[233] https://councilonj.foleon.com/policing/assessing-the-evidence/iv-effectiveness-of-police-training/

10 APPENDIX

10.1 Kroll Project Team



John R. "Rick" Brown is a former Lieutenant Colonel and Deputy Commissioner for Administration and Professional Responsibility of the Pennsylvania State Police (PSP). During his 29-year tenure, Brown oversaw the PSP's reform and accountability efforts in the areas of misconduct, sexual harassment, use of force, and early intervention/risk management initiatives. He developed the PSP's Equal Employment Opportunity Office's statewide liaison program and had oversight of citizen complaints that alleged discrimination or disparate treatment. Brown also oversaw the PSP's five-year Police-Citizen Contact Project, which utilized applied research techniques to assess the extent to which PSP officers engaged in racial or biased-based policing. Brown subsequently oversaw the implementation of proactive training and operational strategies to monitor and prevent racial profiling. In 2010, following a distinguished career in law enforcement, Brown created Transparency Matters, LLC, a certified Minority-owned Business Enterprise ("MBE") that focuses on building transparent policing policies and process change that provides organizational efficiencies, accountability, diversity, community education, training, and monitoring.



Daniel Linskey, former Superintendent-in-Chief of the Boston Police Department, is a nationally renowned expert in urban policing, training, and police-community relations. As Head of the BPD from 2009 to 2014, Chief Linskey developed and oversaw the BPD's social media, recruitment, community outreach, and engagement strategies, which have been cited as among the best practices in police management in the United States. Chief Linskey also changed the management and response of BPD to large-scale public disorder events. He oversaw the peaceful and successful management of the Boston Occupy movement and earned an international reputation at planning and overseeing major special events, and as the Incident Commander during the Boston Marathon Bombing Attack. Chief Linskey was part of a team sent to St. Louis County to assist the Department of Justice with an assessment of the St. Louis County Police Department and collaborative reform project following the events in Ferguson, Missouri in 2014. He is a frequent commentator on proper police tactics for national news organizations.



Dr. Robin Engel, a Professor of Criminal Justice at the University of Cincinnati ("UC") and Director of the UC Center for Police Research and Policy, is a nationally recognized expert on biased-based policing and one of the top-ranked female academics in the country. Dr. Engel has studied and written extensively on biased-based policing and worked with police departments throughout the United States to help them improve and reform. She has published over 60 peer-reviewed articles and book chapters and conducted research on such topics as biased-based policing, police-community relations, police use of force, police use of discretion / decision making, police legitimacy, violence reduction initiatives, reform efforts, and problem-oriented policing. Dr. Engel has conducted statistical analyses examining racial/ethnic disparities in policing outcomes for over a dozen jurisdictions.



J. Larry Mayes is serving as a Project Advisor on community engagement strategies and civilian input into police internal investigations. Mayes has worked with government officials and community leaders for more than two decades. From 2004 to 2010, Mayes served as the Cabinet Chief of Human Services for the City of Boston, where he led joint government/community-based initiatives to reduce crime and stabilize communities. Currently he serves as Vice President of Programs for Catholic Charities in Boston, where he leads the organization's statewide programs on adult education, immigration resettlement and legal services, childcare, and new poverty strategies. In 2014, Mayes was appointed to the Community Ombudsman Oversight Panel, which reviews the BPD's Internal Affairs citizen complaint cases.



Dr. Cassi L. Fields is an expert in the design, development, validation, and administration of large-scale public safety human capital projects, with special expertise in selection and promotional systems in organizations with a history of alleged employment discrimination. Dr. Fields has pioneered many of the nation's most successful human capital selection initiatives, promotion and training programs, and routinely teaches and writes about implicit bias. Since receiving her Ph.D. in 1989, Dr. Fields has dedicated her career to helping public safety agencies remove roadblocks for people of diverse backgrounds compete for promotions. She has developed hundreds of assessment centers for police, fire, and sheriff departments throughout the United States.



A.J. Bingham is serving as an advisor in multi-cultural community outreach in Austin, facilitating local community input into police-citizen interactions, and providing insight into Austin's business, civic, and non-profit communities. Bingham is Founder and CEO of The Bingham Group, LLC, a City of Austin-certified MBE, and full-service consulting firm that represents and advises clients on legislative and regulatory matters throughout Texas. An Austin native, Bingham is active in the community and serves on the boards of the Young Men's Business League of Austin, the Austin Trail of Lights Foundation, and the Long Center for the Performing Arts. A lawyer by background, Bingham received his B.A. in Political Science from Wake Forest University, and law degree from Washburn University School of Law.



Mark Ehlers is the Engagement Leader of Kroll's work with the City of Austin. Ehlers has 35 years of combined legal and investigative experience in the public and private sectors, specializing in government and university investigations, discrimination and harassment in the workplace, and alleged ethical violations. He is currently a managing director in Kroll's Philadelphia office. Prior to joining Kroll, Ehlers served for 18 years as an Assistant United States Attorney, first in the District of Columbia, where he served in the Homicide and Sex Offense Units, and later in the Eastern District of Pennsylvania, where he served on the Organized Crime Strike Force. Since joining Kroll, Ehlers has conducted numerous internal investigations and best practice reviews for a diverse array of public and private sector clients, including the University of Cincinnati Police Department (review and investigation of a UCPD officer's fatal shooting of an unarmed motorist) and North Carolina State Highway Patrol (review of hiring and selection practices, training and supervision following public reports of police misconduct), among others. Ehlers received a B.A., *magna cum laude*, from Wittenberg University, and a J.D., *with honors*, from George Washington University.

About Kroll

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COMPLAINT
EXHIBIT F

RESOLUTION NO. 20191205-066

WHEREAS, the City of Austin is committed to undoing its racist past and combatting and denouncing racism in present-day Austin; and

WHEREAS, the City of Austin acknowledges that the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy; and

WHEREAS, the Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates; and

WHEREAS, the APD's state-mandated racial profiling reports consistently show that Black and Latino drivers are more than twice as likely to be searched as their white counterparts during traffic stops despite similar "hit rates", including in 2018 where 6% of traffic stops of white drivers resulted in a police searches compared to 14% for Latino drivers and 17% for Black drivers; and

WHEREAS, APD data provided per Council Resolution No. 20180614-073 (one of the Freedom City Resolutions) showed that in 2017 APD police officers made discretionary arrests of Black people at more than twice the rate of either white or Latino residents; and

WHEREAS, that same 2017 data also showed Black and Latino residents accounted for just under 75% of those discretionary arrests for driving with an invalid license, although the two groups combine to make up less than 45% of Austin's population; and

WHEREAS, that same 2017 data also showed that one out of three discretionary arrests for misdemeanor marijuana possession involved a Black resident even though less than one in ten Austinites is Black, though usage rates of marijuana are similar across racial groups; and

WHEREAS, per the quarterly report for Council Resolution No. 20180614-073, issued by APD on May 3, 2019, Black people still comprised 32% of persons arrested by APD for offenses eligible for citation, which, proportionally, amounts to more than three times Austin's Black population; and

WHEREAS, an anonymous whistle-blower has recently accused an Assistant Chief of the Austin Police Department of using racist epithets and derogatory terms, including "negro" and "nigger," to refer to specific Black elected officials and sworn officers of the Austin Police Department; and

WHEREAS, following the public release of the anonymous complaint and subsequent resignation of the Assistant Chief named in the complaint, the City Manager announced on November 7, 2019 a third-party investigation into the allegations that the

use of racial slurs and epithets lasted over a period of many years with the knowledge of other leadership at APD; and

WHEREAS, the Mayor's Task Force on Institutional Racism and Systemic Inequity recommends that the City of Austin create protocols to ensure the cultural competency of all personnel, and that the City of Austin's law enforcement agencies engage in continuous diversity and inclusion training, with special attention to implicit bias training; and

WHEREAS, in 2018, the Office of Police Oversight was created to augment accountability and transparency at APD, and that the department could benefit from expanded access and resources; and

WHEREAS, the Austin Police Department presented a training plan during the City of Austin FY2019-20 budget deliberations indicating its intention to graduate almost 200 new cadets in Academy classes scheduled to start in February 2020; and

WHEREAS, attrition rates in recent cadet classes exceeded expectations in at least the last five cadet classes, reaching as high as 49%, suggesting that there exist issues with recruitment and cadet preparedness; and

WHEREAS, while assessment center panels were recommended as a method to counter the potential bias in written exams for promotion of APD officers, there are concerns that the system does not accomplish this goal and in fact may have the opposite impact; and

WHEREAS, patterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust, which is necessary to effectively enforce the law, solve crimes, and maintain public safety, and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The Council supports the investigation initiated by the City Manager into the allegations against a former APD Assistant Chief. The City Manager is directed to provide an update and publicize resulting findings to Council by January 23, 2020.

BE IT FURTHER RESOLVED:

Effective on January 23, 2020, the City Manager is directed to initiate a comprehensive, multi-pronged investigation and evaluation of the extent to which forms of bigotry and discrimination are present in the protocols, practices, and behaviors of the officers of the Austin Police Department. To the extent to which they are present, this investigation and evaluation shall document the impacts these individual and systemic biases have had on hiring, professional ranking, and treatment of personnel within APD, as well as police interactions with people of color and other marginalized groups in Austin.

The investigation should begin with an immediate focus on patterns of prejudiced behavior and institutionalized bigotry in the following high-priority areas:

1. Officer and supervisor communications, including all public posts on social media platforms that are available to the investigator, City email, and text messages and instant message communications on City devices within the last 5 years; and
2. Recruitment practices and protocols, efforts to ensure ethnic and gender diversity and inclusion in recruitment, and assessment of academic resources available to cadets.

Investigation of these high-priority areas of focus should result in an interim report that includes analysis of expressed behavior and patterns, and any immediate recommendations for reform presented publicly to the Council no later than December 7, 2020.

Investigation into and analysis of the following areas of focus should begin concurrently:

3. APD's compliance with state and federal law with regard to racial and sex discrimination in employment;
4. The basis for the weighting of assessment center panel scores in the professional ranking and promotion of APD officers, including the degree to which the use of assessment centers counters potential bias or disparate impact in the promotion process, if at all, and best practices for the transparency and use of assessment

centers in ranking, and the appropriate weights for promotion consideration at each officer level;

5. All use-of-force incident reports from June 2019 to November 2019, analyzing them by location, any resulting charges, the outcome of each incident, and demographic information including race, ethnicity, and language spoken of all persons involved;
6. Aggregate data on every recorded interaction from June 2019 to November 2019 with any member of the public, including type of interaction and its outcome (search, arrest with charges, citation with charges) and an evaluation on whether there are racial and/or ethnic or other disparities in searches, arrests, charges and citations;
7. Complaints made against officers and executives accused of bias and/or discrimination, including complaints that did not result in disciplinary action and the reason that no disciplinary action was taken in each case, for the last 10 years; and
8. Incidents leading to lawsuits for alleged police misconduct, and analysis of the outcomes and subsequent settlements of those lawsuits, including the amount of each settlement, over the last 10 years.

The evaluating entity will issue a final report no later than December 6, 2021, that details any patterns of systemic racism, racist behavior, and other forms of

discrimination found in all the above areas of focus, to include recommendations to remedy and prevent patterns of bias, remedy and prevent patterns of bias, including but not limited to:

- An actionable plan, measurable benchmarks, and appropriate timeline for eliminating racial disparities in APD stops, searches, arrests, and use-of-force incidents;
- A framework for regularly recurring reporting to the Public Safety Commission and Council on APD's progress towards achieving the fair administration of justice, an indicator in the Council-adopted five-year strategic plan;
- Reporting to the Public Safety Commission and Council on the plan to address and remedy any weaknesses and threats for APD as may be identified in the Equity Office's equity assessment tool;
- Continuing education for active APD personnel as part of the required biennial recertification process on topics including implicit bias, racial and ethnic bias, gender bias, de-escalation, the history of policing and its intersection with race in our community, cultural competency, and other topics as recommended by the Equity Office and Office of Police Oversight;
- Reputable leadership training that would benefit APD organizational culture;
- Establishing clear, published standards as it relates to the qualifications required for appointment to Assistant Chief as consistent with state law;

- Creating measurable benchmarks for enhancing diversity at all levels of the department;
- Improving background checks and screening of incoming cadets as well as active officers being considered for promotion as it relates to topics such as explicit and implicit bias, racism, homophobia, gender bias and other forms of discrimination; and
- Creating a regular reporting structure to Council detailing cadet academy class sizes, attrition rates and demographics as well as active officer attrition rates and demographics.

The report to Council should include options for a mechanism to incorporate the aforementioned recommendations and accountability metrics into the performance standards for the APD executive team.

The City Manager is directed to work with and incorporate results from any relevant work that has been conducted or is being conducted by the Equity Office, the Office of Police Oversight, and the Innovation Office as it relates to APD.

BE IT FURTHER RESOLVED:

The independent investigation and examination shall be conducted by an independent third party with substantial experience in the evaluation and investigation of police misconduct, bias, and claims in employment law and Title VII violations, as

well as in assessing systemic conditions that engender civil rights violations, including both organizational decision-making and greater policy-making rules and patterns.

The City Manager shall develop the scope of work and qualifications for the solicitation of the evaluating entity with input from the Joint Inclusion Committee, the Public Safety Commission, and community organizations that advocate for racial justice, equity, and criminal justice reform as allowable by the City's purchasing rules. The City Manager shall determine the appropriate funding sources when recommending the contract for Council approval.

The City Manager is also directed to collaborate with the Equity Office and the Office of Police Oversight in a joint oversight capacity regarding the selection and supervision of the independent investigating entity, to the extent allowed by the City's procurement policies.

BE IT FURTHER RESOLVED:

Separately from the independent third-party investigation that is to be completed no later than December 6, 2021, the City Manager shall initiate an audit of the Austin Police Department's training materials, course/section descriptions and duration, and description of any other procedures (e.g. detailed descriptions of scenarios) administered to cadet classes and to active officers related to training on communication strategies, cultural competency, acknowledging and addressing bias, use of force, de-escalation, search, proactive policing, mental health response, protocols for non-English speaking

persons, protocols for disabled persons, recognizing resistance and the rules and procedures that define resistance and their evaluation protocols, as well as the course/section content and duration of all other coursework required at the cadet academy and their evaluation protocols. The City Manager may work with and incorporate results from any review of APD hiring and training protocols that has been conducted or is being conducted by the APD's training specialist, the Equity Office, the Office of Police Oversight, and the Innovation Office.

The City Manager is directed to update or revise training materials for APD to the extent necessary to remedy any findings from the audit. This process should be as transparent as possible, ensuring that the public has access to view training materials on the topics of bias, racism, and cultural competency in policing. The audit is to be completed and reported to Council no later than June 1, 2020.

During this process, the City Manager will track and report on the following milestones:

- Training conducted at the Austin Police Academy related to reducing bias, increasing de-escalation, reducing racial disparities in use of force and severity of force, reducing racial disparities in discretionary searches, and improving communication with all individuals regardless of language, ethnicity, sexual orientation, gender identity or disability;

- Recruiting and retention and practices and procedures with a focus on whether those practices and procedures could be improved to retain ethnic and gender diversity in cadet classes, and whether those practices and procedures, including the use of disqualification codes for cadets, have a disparate effect or impact based on race, ethnicity, national origin, sex, religion, sexual orientation, or gender identity, etc.;
- Current training priorities based on hours on each topic and the overall balance of training with a focus on whether training should be re-balanced to reduce bias, increase use of de-escalation techniques, and improve culturally effective communication, and trauma-informed policing;
- Cadet training scenarios with a focus on reviewing whether the scenarios teach officers to use all strategies to de-escalate and communicate effectively in the situations statistically most likely to occur on their shifts;
- Identify police academies that have successfully revised training resulting in reduced force incidents and improved communication with diverse communities, including police Academies in Cambridge, Washington (Washington State Criminal Justice Training Commission) and Minneapolis, Minnesota and conduct site visits and review training reforms; and
- Improvements in training should be finalized with the input and participation of community groups representing those disproportionately affected by policing,

including those representing non-white residents and populations, non-English speaking residents and populations, LGTBQIA+ residents and populations, and residents and persons with disabilities.

Following the start of the cadet class scheduled to begin in February 2020, the City Manager shall ensure that no new cadet classes are to be initiated until this audit is completed, revisions to the curricula per the milestones above and new training materials, if necessary, are implemented, in order to resume cadet classes no later than September 2020. If the aforementioned revisions have not been implemented at least 30 days ahead of the start date for the anticipated June 2020 cadet class, the cadet class may be rescheduled as deemed appropriate by APD so long as the revisions have been implemented by the new start date. When classes resume, space will be made available for an independent party to audit classes and instruction.

BE IT FURTHER RESOLVED:

The City Manager shall issue biannual updates on the progress of the independent third-party investigation, to include relevant updates on the solicitation process and anticipated timelines for the investigation to proceed.

ADOPTED: December 5, 2019 **ATTEST:** _____
Jannette S. Goodall
City Clerk

COMPLAINT
EXHIBIT G

The Science of Policing Equity

Measuring Fairness in the Austin Police Department

Phillip Atiba Goff, CENTER FOR POLICING EQUITY & JOHN JAY COLLEGE OF CRIMINAL JUSTICE
Dean Obermark, Nancy La Vigne, and Jennifer Yahner, URBAN INSTITUTE
Amanda Geller, NEW YORK UNIVERSITY

October 2016 (revised May 2017)

Public trust in law enforcement is alarmingly low in many communities nationwide, particularly in those experiencing violent crime coupled with intensive police presence. Research shows that positive police-community relationships are crucial for safer communities: citizens are more likely to engage as witnesses and as partners in crime reduction if they believe in the legitimacy of police as equitable and impartial agents of the law.[1] Yet many community members perceive law enforcement activities to be targeted toward—and biased against—nonwhite people.

Communities wracked by highly publicized shootings of unarmed people of color have called for both greater transparency and accountability on the part of the police. Likewise, law enforcement executives desire hard metrics on current practices and a way to measure changes in response to policies aimed at reducing bias and improving police-community relations.

This brief aims to address the needs of both communities through collaboration between two initiatives: The Center for Policing Equity's **National Justice Database** (NJD) and the White House's **Police Data Initiative** (PDI; see text box). Both NJD and PDI emphasize the importance of collecting and making transparent police data to measure fairness and improve policing equity. NJD also emphasizes applying a rigorous analytic framework to examination of that data.

This brief applies the NJD analytic framework to publicly available PDI data. It focuses on the Austin Police Department (APD) in Texas, one of the first agencies to make its data available through PDI. Importantly, analyses were conducted *independent of any law enforcement agency funding*. In this research brief we present empirical documentation of the degree of racial and ethnic disparities in Austin's policing practices, as well as possible interpretations of such differences.

Our purpose is to demonstrate what can be learned by thoroughly analyzing democratized data. We empirically document the degree of racial and ethnic differences in Austin's policing practices, as well as possible interpretations of such disparities. We hope the brief provides law enforcement officials

with a road map for greater transparency and accountability in police practices, so they can transform agencies to adopt more just and equitable means of promoting public safety.

Highlights

The pages that follow present analyses of APD traffic stops and searches, as well as APD officers' use of force, for the calendar years 2014 and 2015. For both yearly analyses we isolate race and ethnicity, exploring differences in practices and modeling these outcomes of interest while controlling for competing factors, such as place-specific crime rates. The raw data point to disparate treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty.

These findings demonstrate that even in an agency such as the APD, which is instituting reforms aimed at enhancing equity in policing, unwelcome disparities remain, indicating that more work is needed within and beyond law enforcement agencies. Our research also underscores the value of rigorous and impartial analysis of police data—together with public dissemination of the findings—as well as the importance of continual analyses that can help promote and measure change over time.

Collaboration between Two Nationwide Efforts to Increase Policing Equity

Since 2012, the Center for Policing Equity has been working with law enforcement leaders, academics, community advocates, and the Department of Justice to create the **National Justice Database** (NJD), a National Science Foundation–supported effort to compile national-level statistics about police behavior and develop a rigorous analytic road map for examining police data. NJD's goal is to independently help police and communities learn about disparities in law enforcement and hold departments accountable to them. To date, NJD has received commitments from police departments nationwide, serving 25 percent of the United States population; the data, however, have yet to be made public.

Against this backdrop, President Obama's Task Force on 21st Century Policing launched in May 2015 the **Police Data Initiative** (PDI), calling on law enforcement agencies across the country to make data publicly available and partner with researchers and technologists to disseminate it. The Police Foundation makes PDI data available through a portal on its website (https://publicsafetydataportal.org/). Through such transparency, PDI aims to rebuild trust between communities and police and, ultimately, to reduce crime. Thus far, over 100 law enforcement agencies have committed to release data files on police actions such as stops, searches, arrests, and uses of force. While dozens of agencies and members of the public have accessed these data, few people have analyzed the data.

Through a collaboration between these two nationwide efforts, this brief demonstrates how the NJD analytic framework can be applied to PDI data to identify the presence (or absence) of unwarranted racial disparities in officer stops, searches, uses of force, and so forth. This brief also shows how the availability of additional police data, advocated by NJD, can increase public knowledge about how to improve policing equity nationwide.

The NJD Analytic Framework

The Austin-specific findings embodied in this brief are an example of the types of questions the NJD analytic framework is designed to answer. The framework aims to distinguish among possible explanations for racial disparities in policing, of which there are three broad classes:

1. **Disparities that arise from community characteristics.** For instance, high crime rates or poverty within a community may draw increased police attention. Individuals within the community may place disproportionately more calls for service to police.
2. **Disparities that arise from police characteristics.** For instance, police may patrol some neighborhoods with less commitment to the dignity of those who live there. Or, deploying more officers to high-crime neighborhoods may produce disproportionately more interactions between police and nonwhite communities.
3. **Disparities that arise from the relationships between communities and police.** For instance, mistrust of law enforcement may incite some communities to flee approaching officers or resist arrest more than other communities do. Similarly, a sense that communities do not trust or respect police may cause officers to feel unsafe or defensive in some neighborhoods.

While the truth likely incorporates elements of each of these explanations, the NJD framework allows departments to learn about how all three contribute to racial disparities. By combining police administrative data with population data (e.g., income, education, racial demographics), police department climate surveys, and community surveys, we can credibly examine the role that each explanation plays in the disparities that both police departments and communities want to reduce.

However, because NJD data on police behavior are neither publicly accessible nor integrated into the PDI rubric, this brief carefully analyzes the role that community-level factors play in racial disparities—that is, explanation 1. The resulting analyses can be used to steer community engagement, relationship building, and continued department reform. Importantly, the persuasive power of analytics grows substantially the longer a department measures and analyzes important indicators. As a result, we encourage the APD, the people of Austin, and all PDI-participating communities to see these analyses as a *first benchmark* against which progress can be measured. With many departments set to receive similar briefs in the coming years, we hope this analytic framework can be a road map for police and communities—establishing where they are now and charting a path toward a more just future.

In fairness, no police department in the country currently collects all the data recommended in the NJD analytic framework (though several departments collect each element of non-survey data). CPE and Urban chose the APD as our partners for this brief because its use-of-force dataset is among the most comprehensive in the country and is the single most comprehensive *publicly available* use-of-force dataset. In addition to its use-of-force dataset, the APD publishes a dataset on citations and arrests resulting from vehicle stops.

The APD does not publish any officer-level data because of officer privacy considerations; police departments rarely make these data public. As a result, we are unable to analyze how much racial disparities are attributable to individual officers (compared to the department or the region). The APD also does not publish data on complaints against officers, so we are unable to examine racial disparities

in complaints using PDI data (Austin's Office of the Police Monitor publishes an annual report on citizen complaints, but these data are not in the PDI portal and thus not subject to analysis here). Additionally, though the APD does make its disciplinary matrix and general orders available to the public, these are not in the PDI portal, so we do not explore questions about policy comprehensiveness in our analyses.

The APD documents, but does not publish data on, pedestrian stops or vehicle stops not resulting in citation or arrest. As a result, we are unable to ask questions about racial disparities in pedestrian stops, and our ability to ask questions about the source of disparities in vehicle stops is limited. We encourage the APD to begin data collection of these fields while noting that new data collections are time consuming, may lower morale in the short term, and require technical infrastructure to aggregate and analyze.

The above description of APD's data holding and publicly available data is offered to demonstrate the tremendous opportunity for greater clarity on fairness in policing that could be afforded by further democratization of policing data. These opportunities are not for the APD alone but for law enforcement agencies nationwide.

The dashboard on the next page illustrates the types of data that could—and arguably should—be collected and disseminated through the PDI portal, whether Austin currently has these data publicly available, and how analyses of these data can answer critical questions that can help move the needle in reducing racial and ethnicity-based bias in policing and enhancing trust between community members and the police. The dashboard is designed to articulate the questions that can be asked of police departments using their data as well as community survey data (while the City of Austin conducts an annual police satisfaction survey of residents, it is not representative of communities most likely to experience violent crime and heavy police presence). The dashboard underscores that because certain data are not currently published through the PDI portal several questions in the NJD analytic framework cannot be posed and answered.

Austin Police Department Data

The Austin Police Department embodies 1,900 officers serving the 11th-largest city in the United States, with 930,000 residents as of 2015. The population of the Austin greater metropolitan statistical area (MSA) is more than double that of the city: 2 million residents, many of whom commute into Austin daily.



Austin, Texas

In this brief, we focus on two types of Austin police data made available through the PDI portal: vehicle stops that resulted in citation or arrest in 2015, and incidents involving police use of force in 2014. We show total counts of vehicle stops and use-of-force incidents and counts by white, black, and Hispanic race and ethnicity. Over half of Austin MSA's residents are non-Hispanic white (53 percent), nearly a third are Hispanic (32 percent), and less than one-tenth are non-Hispanic black (7 percent). Because urban centers such as Austin experience an

Availability of Austin PD Data to Answer NJD Analytic Questions

	Are there racial disparities?	How much are disparities attributable to officers?	How well do officer-level psychologies predict disparities?	What accounts for disparities?	How healthy are officers?	How comprehensive are departmental policies?
Administrative datasets						
Vehicle stops	**Moderate data**	Not in PDI	Not in PDI			
Pedestrian stops	Not in PDI	Not in PDI	Not in PDI			
Use-of-force	**Rich data**	Not in PDI	Not in PDI			
Complaints	Not in PDI	Not in PDI	Not in PDI			
Crime/calls				**Rich data**		
Officer discretion				**Moderate data**		
Neighborhood				**Rich data**		
Police climate surveys						
Psychological health					Not in PDI	
Physical health					Not in PDI	
Job health					Not in PDI	
Policy analyses						
Racial equity						Not in PDI
Trust						Not in PDI
Reduce force						Not in PDI
Thorough						Not in PDI
Effective						Not in PDI

influx of regional residents who visit the city for work and recreation, MSA population figures are more appropriate measures to adjust police data counts for exposure to different citizens. Racial and ethnic differences in police data must also be contextualized with other contributing factors, including level of illegal activity, something we model in the use-of-force analysis by using census tract level Part I crimes as a proxy.

Vehicle Stops and Searches

Over time, the volume of vehicle stops in Austin resulting in a citation remained fairly constant, at approximately 10,000 stops a month, with one sharp drop during September 2015. The number of

FIGURE 1

Vehicle Stops Resulting in a Citation, 2015

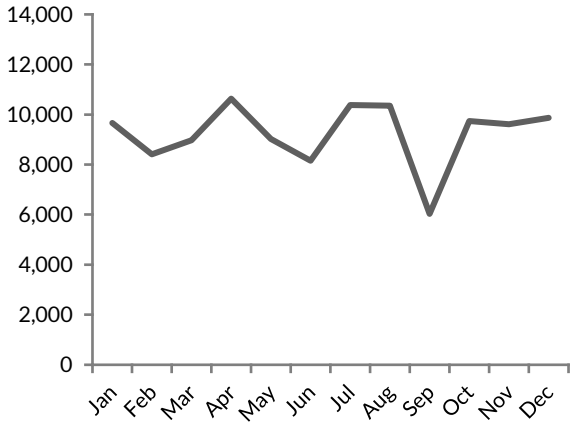
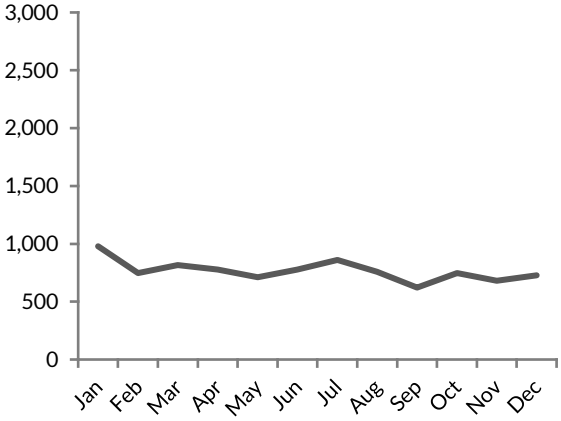


FIGURE 2

Vehicle Stops Resulting in an Arrest, 2015



vehicle stops resulting in an arrest was much lower, averaging 750 a month and remaining fairly constant across time after peaking in January 2015.

VEHICLE STOPS BY RACE OR ETHNICITY

In total, Austin police stopped more white and Hispanic than black drivers in each month of 2015, an expected pattern given the higher share of white and Hispanic residents in the Austin metropolitan area. However, among stops resulting in a citation, more white than Hispanic drivers were stopped each month, while the opposite was true for stops resulting in an arrest. Each month of 2015, a higher number of stopped Hispanic drivers were arrested than either white or black stopped drivers. These counts are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 3

Vehicle Stops Resulting in a Citation by Race or Ethnicity, 2015

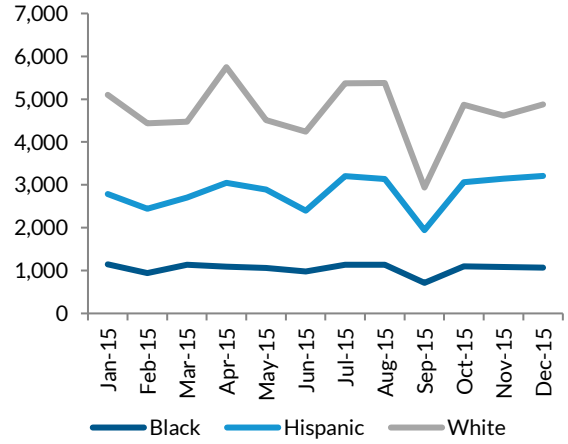
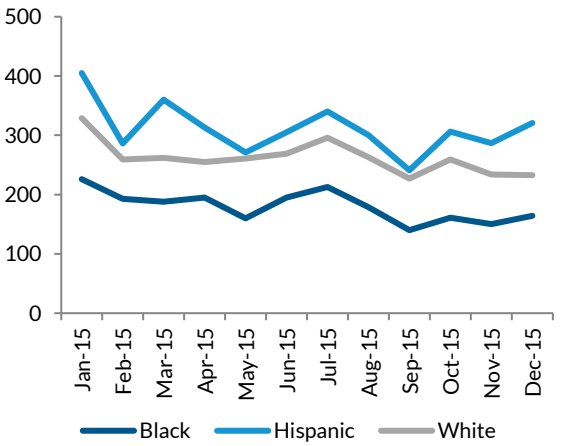


FIGURE 4

Vehicle Stops Resulting in an Arrest by Race or Ethnicity, 2015



When accounting for underlying population, however, we see that rates of vehicle stops resulting in citation or arrest were highest for black drivers throughout the year. In other words, while the fewest number of vehicle stops occurred for black drivers, a higher proportion of black people was stopped than Hispanic or white people. Similar proportions of white and Hispanic drivers experienced vehicle stops resulting in citations, but stop rates resulting in arrests were twice as high among Hispanic drivers as white drivers. Again, these rates are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 5

Per Capita Stops Resulting in a Citation by Race or Ethnicity, 2015

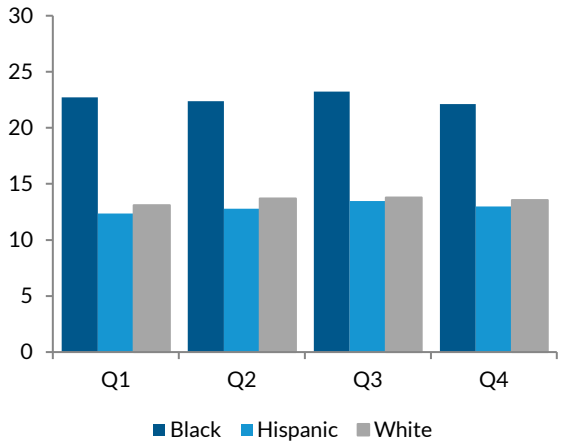
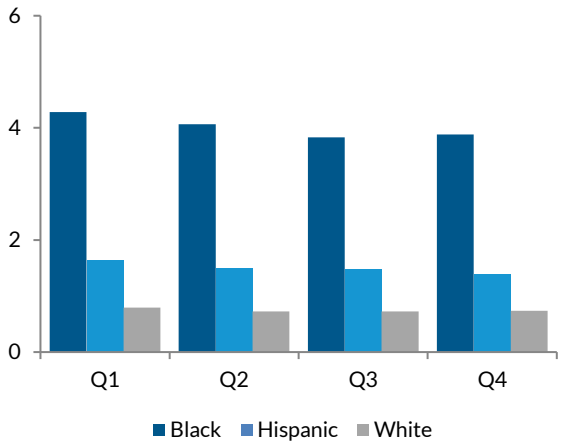


FIGURE 6

Per Capita Stops Resulting in an Arrest by Race or Ethnicity, 2015



VEHICLE SEARCHES BY RACE OR ETHNICITY

Vehicle stops may result in a search following arrest and may precede arrest if reasonably necessary for officer protection (e.g., weapons search), there is probable cause of evidence of crime, or upon the driver's consent. Because only 2 percent of APD's vehicle stops that resulted in a citation involved searches, this section focuses on vehicle stops resulting in arrest.

Three-quarters (76 percent) of APD's arrest stops involved a vehicle search; of those searches, 77 percent were described as occurring for reasons "incidental to arrest." Following *Arizona v. Gant*, 556 U.S. 332 (2009), searches performed incidental to arrest are conducted after an arrest has been made to address continuing safety threats or preserve criminal evidence. Searches performed for other reasons not incidental to arrest, including for "probable cause," as a "frisk for safety," or by driver's "consent," are assumed to have been conducted before arrest and were subjected to greater officer discretion. We focus analysis on these latter searches, which made up 23 percent of those conducted in 2015.

Focusing on searches *not* incidental to arrest, **figure 7** shows the percentage of vehicle stops resulting in a search, broken down by drivers' race/ethnicity. In general, search rates were highest for stopped black drivers and lowest for stopped Hispanic and white drivers. The search rate for black drivers peaked early in 2015 at 32 percent, meaning 1 in 3 stops of black drivers involved a search, and was lowest at the end of 2015, when one in six stops (16 percent) of black drivers resulted in a search.

Search rates for Hispanic and white drivers were generally similar, averaging 16 percent and 14 percent respectively, across the time period. By the end of 2015, the racial gap in percentage of drivers searched by race/ethnicity had closed somewhat.

The APD also records whether contraband (drugs, weapons, cash, alcohol, and "other items") was recovered from vehicle searches. One in three (32 percent) vehicle searches yielded contraband, compared with almost half (48 percent) of nonincidental vehicle searches. **Figure 8** shows the search "hit" rates, or percentage of nonincidental searches resulting in contraband discovery, by race/ethnicity. Although hit rates vary, few discernible patterns of differences by race/ethnicity are evident; hit rates average 47 percent for Hispanic drivers, 49 percent for black drivers, and 50 percent for white drivers.

This lack of hit rate differences can typically be interpreted as evidence of lack of bias in decisions to stop or search,[2] but in this case, because the data include only cases in which arrests were made, we do not know the rates at which different groups were searched and contraband was *not* found. Consequently, we cannot draw any conclusions about bias from hit rates among arrest stops. Regardless, APD's hit rates are very high and may be explained, at least in part, by the fact that APD has one of the strictest consent search requirements in the country, for which officers must have probable cause to conduct a search. These hit rates also appear high because they are limited to stops resulting in arrest; other jurisdictions looking at *all vehicle stops* have found hit rates ranging from 7 percent to 34 percent.[3]

FIGURE 7

Share of Drivers Subject to Nonincidental Searches by Race or Ethnicity, 2015

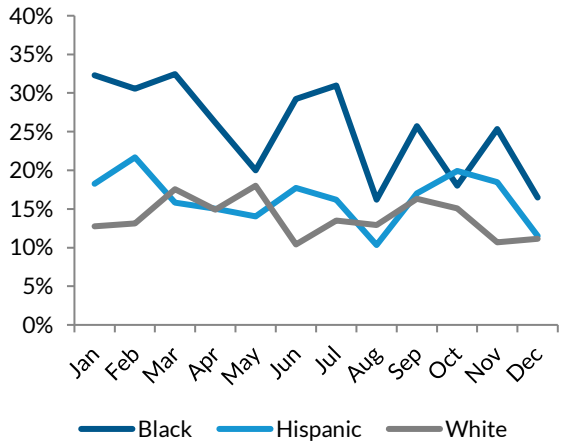
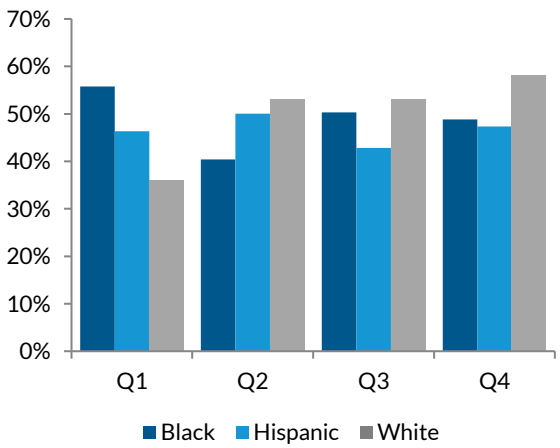


FIGURE 8

Nonincidental Search "Hit" Rates by Race or Ethnicity, 2015



MODELING OFFICER DISCRETION IN VEHICLE STOPS AND SEARCHES

In this section, we present analyses that help us explore whether racial disparities in vehicle stops that lead to citations and arrests are potentially warranted or unwarranted. First, we examine the role of officer discretion in deciding whether to make a stop; second, we model the decision to search a vehicle once a stop is made.

Officer Discretion. To understand whether racial disparities in officer-initiated (discretionary) stops exceed racial disparities in nondiscretionary stops, such as those initiated by citizens through calls for service and commission of felony or misdemeanor, we compute the officer discretionary index (ODI) as follows:

$$ODI = \frac{Officer\ Initiated\ Stops\ of\ B/H/W}{All\ Officer\ Initiated\ Stops} - \frac{Citizen\ Initiated\ Stops\ of\ B/H/W}{All\ Citizen\ Initiated\ Stops}$$

The ODI compares the proportion of officer discretionary stops of blacks (*B*), Hispanics (*H*), and whites (*W*) with the proportion of citizen-initiated stops of the same racial/ethnic group. If a racial group's proportion among officer discretionary stops differs from that among nondiscretionary stops, there may be indication of racial bias. **A positive (or negative) ODI indicates that officers are initiating a higher (or lower) share of stops of that racial or ethnic group than are citizens.** A null result (0) indicates that officer discretion judgment is on pace with that of citizens.

For the Austin police data, we examined the reason recorded for making a stop to distinguish between officer-initiated (discretionary) and citizen-initiated (nondiscretionary) stops. Discretionary stops were defined as those of a "suspicious person," while nondiscretionary stops were defined as those stemming from calls for service or violations of Texas penal code, Austin city ordinance, or the Texas water safety act.[4]

Table 1 shows the ODIs calculated for blacks, Hispanics, and whites in Austin, based on vehicle stops resulting in citation or arrest for 2015. As shown, there is no evidence of racial bias in stops of Hispanic drivers. By contrast, among stops resulting in citation or arrest, a higher share of officer-initiated stops of black drivers was present than citizen-initiated stops of black drivers (the difference is higher among stops resulting in arrest). An equivalently *lower* share of officer-initiated stops of white drivers was present than citizen-initiated stops of white drivers.

TABLE 1

Officer Discretionary Indices, 2015

	Stops Resulting in Citations			Stops Resulting in Arrests		
	% discretionary	% non-discretionary	ODI	% discretionary	% non-discretionary	ODI
Blacks	21	13	0.09	31	19	0.12
Hispanics	41	41	0.01	38	38	0.00
Whites	38	47	-0.09	31	43	-0.12

Note: Discretionary stops are initiated by police officers; nondiscretionary stops are initiated by citizens.

Decision to Search. To understand officers' decision to search a vehicle following a stop, we examined four possibly predictive factors available in the Austin police data, simultaneously in a logistic regression model: driver's race or ethnicity (black, Hispanic, white), driver's gender (male, female), driver's age, and whether the officer indicated he or she knew the driver's race or ethnicity before making the stop.[5] We also tested the possibility that these factors interacted to predict a decision to search.

For this model, we again focused on vehicle stops resulting in arrest and on searches that were not described as incidental to that arrest. Overall, 23 percent of the arrest stops resulted in a search for which the recorded reason was either "probable cause" (18 percent), "frisk for safety" (4 percent), "contraband in plain view" (0.5 percent), or driver's "consent" (0.3 percent).

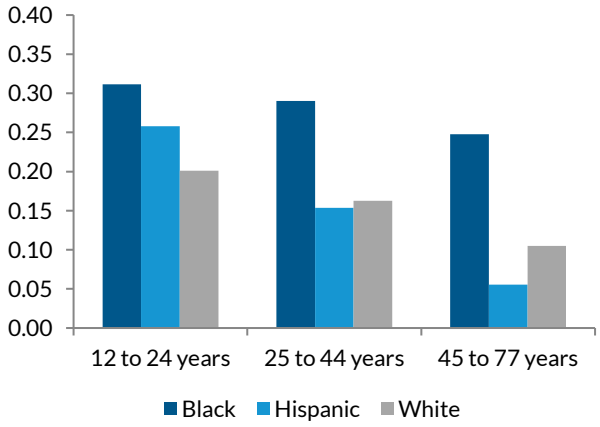
In the regression model, drivers' race/ethnicity and age interacted to predict Austin police officers' decisions to conduct searches on stopped vehicles. This finding remained true after adjusting for driver's gender, whether driver's race was known before the stop, and an interaction between driver's gender and age. **Figure 9** graphs the model-estimated probabilities that a vehicle would be searched by drivers' race/ethnicity and age. Three findings are noteworthy:

- Stopped black drivers of all ages had the highest probabilities of vehicle search.
- Stopped, young Hispanic drivers had the second-highest probability (0.26) of vehicle search, at a rate comparable to that of older black drivers (0.25).
- Age-related reductions in the probabilities of vehicle search were greater for stopped white and Hispanic drivers than for black drivers.

We also noted (but did not graph) that the estimated probabilities of vehicle search were higher when the driver's race was known before a stop (0.30 compared with 0.19) and for younger male (0.28) than older female drivers (0.15). These findings were included as controls in the model.

FIGURE 9

Probability of Vehicle Search by Age and Race or Ethnicity, 2015



Source: Logistic regression model predicting vehicle search, among 7,870 APD vehicle stops ending in arrest in 2015.
Note: Model included drivers' race, age, gender, whether race was known before the stop, and interactions between race and age and between age and gender.

This model provides insight into the relative importance of different factors in predicting Austin officers' decision to conduct a vehicle search on stops ending in arrest, but is unable to control for drivers' differential involvement in illegal activity or exposure to police.

Use-of-Force Incidents

Next, we examined APD's 2014 data on recorded use of officer force against citizens, made public for the PDI and the most comprehensive, publicly available use-of-force dataset. Use-of-force incidents included a range of physical responses to citizens' failure to comply with officers' verbal commands.

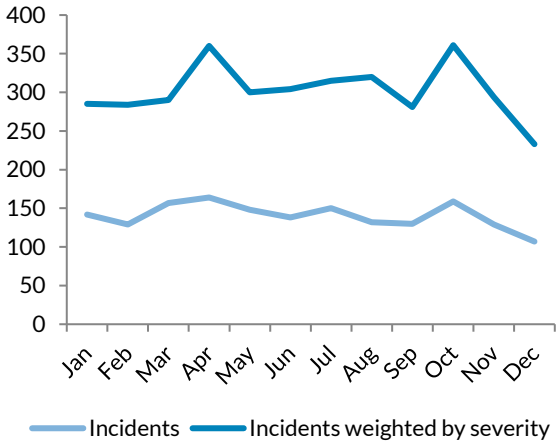
Six general categories of force were distinguishable in the APD data: (1) weaponless use of hands or feet to target pressure points; (2) use of an impact weapon such as a baton; (3) use of a chemical agent such as pepper spray; (4) canine bites; (5) use of a conducted energy device (Taser) or less-lethal impact weapon, such as beanbag/rubber bullets; and (6) lethal firearm use. By far, the largest category of force used was (1), which accounted for over two-thirds of force incidents.

Following the NJD analytic framework, we applied a weighted severity scale to these force incident categories so use of a firearm, for example, was weighted more severely than use of a baton. Accordingly, the severity weighting consisted of a 6-point scale aligned with the six categories of force above (e.g., 1 = hands/body, 2 = impact weapon, 3 = pepper spray, 4 = canine, 5 = Taser/less-lethal weapon, 6 = lethal firearm). Higher scores corresponded with more severe levels of force.

Throughout this section, we analyzed both the *counts* of force incidents as well as the *severity* of force incidents. As shown in **figure 10**, both the counts and severity of APD force incidents remained fairly constant over time from January to December 2014.[6] This finding is similar to that for the counts of APD vehicle stops in 2015.

FIGURE 10

Use-of-Force Incidents, 2014



USE OF FORCE BY RACE OR ETHNICITY

Figure 11 and **figure 12** display the counts and severity of force incident rates by citizen's race or ethnicity (per 1,000 citizens). Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA. However, this descriptive analysis of differential exposure to use of force provides no insight on the

complex factors and characteristics that might give rise to such disparities. To explore those factors, more advanced statistical modeling was necessary, as advocated by the NJD analytic framework.

FIGURE 11

Use-of-Force Rates by Citizen Race or Ethnicity, 2014

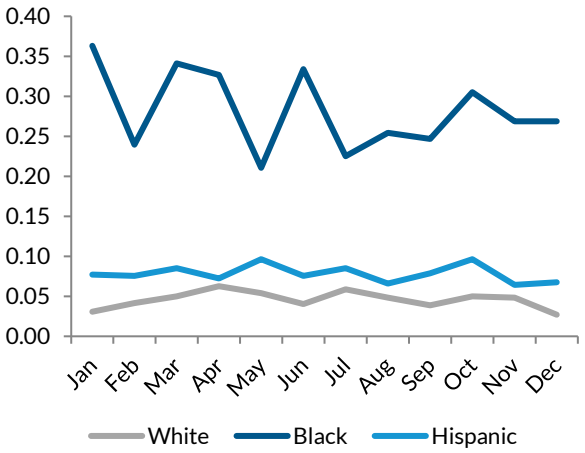
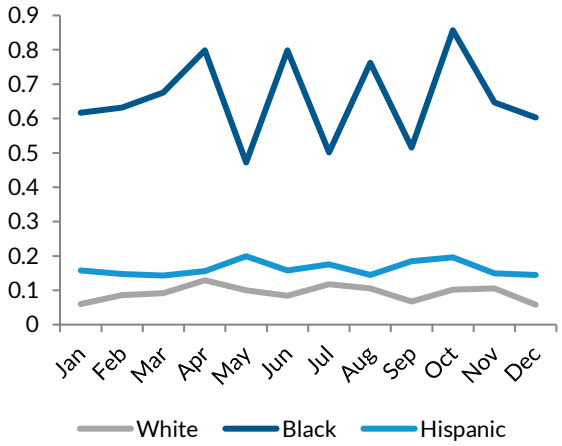


FIGURE 12

Use-of-Force Severity Rates by Citizen Race or Ethnicity, 2014



MODELING USE OF FORCE

To better understand apparent disparities in APD's citywide use of force, we tested the effect of neighborhood-level characteristics on the number of use-of-force incidents that occurred within a census tract, as well as the cumulative severity of force used in those same events.[7]

For these two analyses, we aggregated use-of-force events/severity to the tract level, estimating the independent effects of six neighborhood and demographic characteristics on police use of force: Part I crime rate, median household income, percentage of college-educated residents, homeownership rate, percentage of black residents, and percentage of Hispanic residents.[8] The first four of these characteristics represent theoretically relevant predictors of police use of force, and so they function as control variables in our models. The percentages of black and Hispanic residents help test whether disparities in police use of force persisted after controlling for those community characteristics.

Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin's neighborhoods with a higher percentage of black or Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood were statistically significant positive predictors of police use of force. The percentage of black residents in a neighborhood had a larger effect than percentage of Hispanic residents in both models.

Median household income and crime rate were also impactful and statistically significant predictors of police use of force. The results of the use-of-force incidents model and the use-of-force severity model were largely the same. The statistically significant predictors—median household income, Part I crime rate, percentage of black residents, and percentage of Hispanic residents—were identical

between models. As one would expect, estimated effect sizes were larger for the force severity model because of the multiplicative severity-weighting procedure.

According to the model of use-of-force incidents, a one-point rise in the percentage of black residents increased the expected number of use-of-force incidents by 2.6 percent, holding all other variables constant. The percentage of Hispanic residents had a smaller effect: a one-point rise in the percentage of Hispanic residents increased the expected number of use-of-force incidents by 1.1 percent.

Comparing effect sizes across all independent variables was challenging because the variables were measured in vastly different units. Using standard deviation units, we compared the estimated percentage change in use-of-force incidents uniformly. Increasing the percentage of black residents in a tract by a standard deviation—about 8 percent—led to a 24 percent increase in expected use-of-force incidents. By contrast, a standard deviation increase in the percentage of Hispanic residents—almost 22 percent—led to a 27 percent increase in expected use-of-force incidents.

A standard deviation increase in a tract's Part I crime rate—an upswing of 50 crimes per 1,000 residents—increased the expected number of use-of-force incidents by 92 percent. A standard deviation increase in median household income—a rise of $28,000—decreased the expected number of use-of-force incidents by 33 percent.

FIGURE 13

Estimated Percentage Change in Use-of-Force Incidents Resulting from a Percentage-Point Increase by Race and Ethnicity

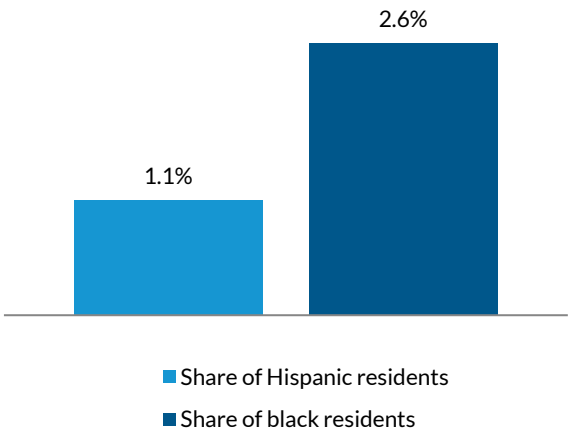
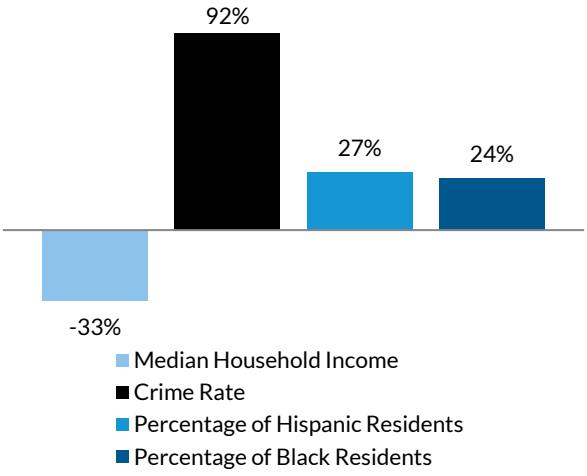


FIGURE 14

Estimated Percentage Change in Use-of-Force Incidents Resulting from a Standard Deviation Increase by Income, Crime, Race, and Ethnicity



Lessons Learned

This report is the first to apply NJD's independent analytic framework to police data made available through the White House's PDI. Although several limitations applied to the findings, as noted throughout, the analyses are encouraging because they represent the start of a more comprehensive and transparent effort to understand—and help correct—the degree of racial and ethnic disparities in policing practices. The information presented is beneficial to both community members and policing executives alike.

As described earlier, the NJD analytic framework identifies three categories of explanation for racial disparities in policing: community level, police level, and relationship level. Given the limited availability of publicly available APD data, and that which is housed on the PDI portal, our analyses are only able to examine community-level explanations. Specifically, this brief analyzes racial disparities in APD police vehicle stops and use of force. The results are mixed.

Analyses of vehicle stop data reveal three important findings.

First, APD searches appear to be highly effective. Searches left to officer discretion (that is, not incidental to arrest) returned contraband roughly 48 percent of the time. While this result may stem in part from APD's unusually stringent policy on consent searches, which require probable cause, it also may be the result of missing data. Given that APD does not publish data on all vehicle stops, an unknown number of vehicle stops and searches did not result in arrest. *To address this omission, APD Chief Acevedo has instructed the department to collect and publish data on both pedestrian and vehicle stops that do not result in citation or arrest by January 2017.*[9] Presumably fewer of those searches end in arrest given the lack of contraband found. Still, the relatively high hit rate should be a goal of law enforcement, and APD's available data suggest reasons for optimism.

Second, there are racial disparities in the decision to stop and search a suspect. Both our models of decisionmaking around searches, the officer discretionary index and the probability of vehicle search model, reveal disparities by race. The ODI revealed that, for vehicle stops ending in citation or arrest, stopped black motorists made up a higher share of officer-discretionary stops than of stops mandated by citizen complaints or by statutes requiring officers to stop a citizen. Similarly, the ODI revealed that stopped white motorists made up a lower share of officer-discretionary stops. Finally, a model of the decision to search revealed that blacks and Hispanics, once stopped, were more likely to be searched than would be indicated by their representation among those stopped. These findings, however, are qualified by our final finding.

Third, an analysis of racial disparities in hit rates revealed no reliable differences between blacks, whites, and Hispanics. Previous research demonstrates that this is not proof of the absence of bias.[10]

The takeaway from these findings is that community-level explanations appear to account for a sizable amount in observed racial disparities. We encourage the APD to continue monitoring these issues and to collect data on all its vehicle stops to assess the equity of officer behavior even more accurately.

By contrast, analyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained.** In other words, community-level explanations of use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks.

Still, these discrepancies are not direct evidence of racial prejudice. Rather, they suggest that police-level and/or relationship-level explanations of use-of-force incidents are also implicated. In other words, we advise APD to focus on police-level and relationship-level concerns to reduce racially disparate use of force.

Common police-directed interventions to minimize racially disparate policing include trainings, particularly ones on how to identify and disarm unintended forms of bias (e.g., identity traps and/or implicit bias), policy reviews conducted by external auditors, and collaborative policy reviews with communities. Relationship-directed interventions highlight principles of procedural justice, particularly issues of community voice and police transparency.

Importantly, the APD has recently attempted to promote transparency by instituting a policy governing the use of body-worn cameras. That someone may be terminated immediately if his or her camera is not activated during a deadly force incident (without appropriate justification) is a strong accountability metric. Similarly, new additions to APD's disciplinary matrix on failure to report complaints (with termination recommended after a second infraction) are strong signals of accountability. APD has also stated that effective January 2017 it will include a form on the back of citations that affords citizens an avenue for both complaints and positive feedback following interactions with officers. Finally, APD's leadership on issues of data transparency also signals a willingness to receive criticism and reform in line with the shared values of police and communities—of particular importance given recent concerns about nonreporting in Texas.[11]

We recommend that APD continue each of these initiatives as well as engage the broader communities of Austin in collaborative efforts to reform and implement policies that reflect their shared values. We also encourage police and community collaboration to design metrics of accountability that are easily understood by the community and leveraged for change both inside the APD and in the Austin metropolitan area.

The science of policing equity demonstrates clearly that collaboration between communities and police is necessary to rebuild trust and reduce the negative consequences that can result from racial disparities in police contacts.[12] We encourage further pursuit of those collaborations and the use of these analyses as benchmarks for both racial equity and progress toward that goal.

Notes

1. See Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006).
2. See Nicola Persico and Petra Todd, "Generalising the Hit Rates Test for Racial Bias in Law Enforcement, with an Application to Vehicle Searches in Wichita," *Economic Journal* 116, no. 515 (2006): F351–67.
3. Persico and Todd, "Generalising the Hit Rates Test."
4. Austin has a three-square-mile lake within the city limits.
5. Although officers' recording of whether a driver's race was known before a vehicle stop was missing for 13 percent of cases, including the variable did not alter the substantive effects of other factors in the model, and it was a significant predictor of vehicle search, so it was retained. Regarding the trustworthiness of the variable's values, we note that officers' were half as likely to indicate race was known (7 percent versus 15 percent) during nighttime (9:00 p.m.–2:00 a.m.) vehicle stops as during other hours of the day, and APD policies specified strict guidelines and consequences for failure to record accurate information for this variable.
6. Use-of-force incidents are coded at the citizen level, meaning that an event consisting of two officers using force against one citizen, for example, is counted as a single use-of-force incident. Conversely, an event that consists of one officer using force on two citizens would be counted as two use-of-force incidents.
7. Use-of-force incidents were weighted using the same schema as used previously.
8. Those characteristics are taken from the 2010–14 American Community Survey five-year estimates.
9. Chase Hoffberger, "APD to Collect More Data," *Austin Chronicle*, April 8, 2016, http://www.austinchronicle.com/news/2016-04-08/apd-to-collect-more-data/.
10. Kate Antonovics and Brian G. Knight, "A New Look at Racial Profiling: Evidence from the Boston Police Department," *Review of Economics and Statistics* 91, no. 1 (2009): 163–77.
11. Lise Olsen, "In Texas and California, Policy Fail to Report Use-of-Force Fatalities from 2005–2015," *Houston Chronicle*, October 9, 2016, http://www.houstonchronicle.com/news/houston-texas/houston/article/In-Texas-and-California-police-fail-to-report-9958631.php.
12. Tyler, *Why People Obey the Law*.

Errata

This brief was updated in May 2017 to clarify the titles of figures 13 and 14 on page 13, make language on pages 5 and 14 more consistent, and correct a typographical error on page 15.

About the Authors

Phillip Atiba Goff is the cofounder and president of the Center for Policing Equity and the Franklin A. Thomas Professor in Policing Equity at the John Jay College of Criminal Justice. Dr. Goff is an expert in contemporary forms of racial bias and discrimination, as well as the intersections of race and gender.

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Nancy La Vigne is director of the Justice Policy Center at the Urban Institute. She manages a staff of over 50 scholars and conducts her own research on policing, criminal justice technologies, and reentry from incarceration.

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Acknowledgments

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ABOUT THE CENTER FOR POLICING EQUITY

Created in 2008 by a collaborative effort of Dr. Phillip Atiba Goff and then-Denver Police Department Commander Dr. Tracie L. Keesee, the Center for Policing Equity is a research and action think tank that works collaboratively with law enforcement, communities, and political stakeholders to identify ways to strengthen relationships with the communities they serve. Using evidence-based approaches to social justice, we use data to create levers for social, cultural, and policy change.

The Center for Policing Equity is also the home of the National Justice Database, a National Science Foundation effort to standardize national-level data on police behavior. Principal investigators on the National Justice Database are Phillip Atiba Goff, Jack Glaser, Amanda Geller, and Steven Raphael.

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EXHIBIT H

GO
364

Austin Police Department
General Orders

Off-Duty Law Enforcement Actions

364.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This order is intended to provide guidelines for officers of the Austin Police Department with respect taking law enforcement action while off-duty. The same standard of objective reasonableness that applies to on-duty enforcement actions shall also apply to off-duty enforcement actions.

This order does not apply to officers who are working in an undercover or approved secondary employment capacity.

364.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged, particularly when officers are outside their jurisdiction. Reporting to the appropriate law enforcement agency and safe monitoring of suspected criminal activity is favored.

(a) Officers should not attempt to initiate enforcement action when witnessing minor crimes; Officers are not expected to place themselves in unreasonable peril.

(b) Officers who becomes aware of an incident or circumstance that he reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage, should take reasonable action to minimize the threat.

(c) Officers must remember that their authority to arrest may be limited based upon their jurisdiction.

364.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal and state law and department general orders.

(a) Any officer wishing to carry a firearm while off-duty is authorized to do so as either a law enforcement officer as allowed by this order or as a civilian under the authority of the state issued license, not both.

(b) Officers shall carry their Department issued badge and identification card when carrying firearms off-duty under the authority granted to a law enforcement officer.

(c) An officer carrying off-duty under the authority of a state issued license, whether concealed or open, will not display his or her APD badge or ID, or use or carry any APD equipment, including their issued firearm.

(d) Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage, or taken any drugs, that would tend to adversely affect the officer's senses or judgment.

(e) For purposes of this section of this order, off-duty is defined and as any activity in which the employee is not receiving compensation or benefit as a result of their employment with the Department, or wearing any part of an authorized uniform.

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1. This definition does not apply to officers who are working in an undercover capacity.

364.4 DECISION TO INTERVENE

Generally, off-duty officers should consider waiting for on-duty uniformed officers to arrive and gather as much accurate intelligence as possible instead of immediately intervening.

(a) Officers should take into consideration the following factors when making a decision on whether or not to intervene:

1. The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.
2. The inability to communicate with responding units.
3. The lack of equipment, such as handcuffs, OC or baton.
4. The lack of cover.
5. The potential for increased risk to bystanders if the off-duty officer were to intervene.
6. Unfamiliarity with the surroundings.
7. The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

364.4.1 INTERVENTION PROCEDURE

If involvement is reasonably necessary, an officer should call or have someone else call 9-1-1 to request immediate assistance if possible.

(a) The operator should be informed that an off-duty officer is on-scene and provided a description of the officer if possible.

(b) Officers should clearly identify himself as a police officer to those involved in the situation, if practicable.

(c) Officers should fully cooperate with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

364.4.2 INCIDENTS OF PERSONAL INTEREST

Unless there is an exigent circumstance, employees shall refrain from handling police incidents of personal interest (e.g., family or neighbor disputes). When practicable, employees should report the matter to 9-1-1 so that an on-duty officer can respond.

(a) Offenses that may be committed against the employee, members of the employee's family, or a business interest of the employee will be reported to the Investigative Unit with responsibility for investigation of such offenses. Normal filing procedures will be followed to prevent any potential for abuse of authority.

(b) Employees shall not maintain continued involvement in any criminal case, nor personally file any criminal charge in a court of law, against any person for criminal

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offenses committed against the employee, any member of the employee's family, or which involves any business in which the employee has a proprietary interest.

364.4.3 CIVILIAN RESPONSIBILITIES
Civilian personnel should not become involved in any law enforcement incident while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable. This order does not prevent a civilian employee from taking action as a private citizen as authorized by State law.

364.4.4 OTHER CONSIDERATIONS
When encountering non-uniformed officers in public, uniformed officers should wait for acknowledgement by non-uniformed officers in case they need to maintain an undercover capability.

364.5 REPORTING

(a) In addition to contacting the appropriate agency, any off-duty employee who engages in any law enforcement activity shall notify, as soon as practicable:

1. The employee's immediate supervisor if the supervisor is on-duty.
2. Any on-duty supervisor when the employee's immediate supervisor is off-duty.

(b) The notified supervisor shall determine whether a report should be filed by the employee.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. **THE CITY OF AUSTIN**, *Defendants*.	§	**Case No. 1:22-cv-00655-RP** **JURY TRIAL REQUESTED**
JESSICA ARELLANO, Individually and as Next Friend of Z.A., a minor child, *Plaintiff*, v. **THE CITY OF AUSTIN**, **GABRIEL GUTIERREZ,** and **LUIS SERRATO** *Defendants*.	§	**Case No. 1:23-cv-00008-RP** **JURY TRIAL REQUESTED**
ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. **LUIS SERRATO**, and **GABRIEL GUTIERREZ**, *Defendants*.	§	**Case No. 1:23-cv-00009-RP** **JURY TRIAL REQUESTED**

PLAINTIFFS' MOTION TO DISMISS
HENDLER FLORES LAW, PLLC'S FIRST AMENDED PLEA IN INTERVENTION
PURSUANT TO FRCP 12(B)(1) AND FRCP 12(B)(6)

INTRODUCTION

Pursuant to Fed. R. Civ P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6), Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera (collectively "Plaintiffs) file this consolidated motion to dismiss Hendler Flores Law PLLC's ("HFL") First Amended Plea in Intervention [Dkt. 53]. HFL's intervention claim should be dismissed for three independent reasons: (1) HFL's asserted intervention claim is not ripe because it has not accrued under Texas substantive law, (2) this Court lacks an independent basis for Article III jurisdiction to hear HFL's asserted intervention claim, and (3) HFL's First Amended Plea in Intervention fails to allege the elements of any cognizable legal claim.

The Court previously considered and rejected some of the foregoing positions in connection with the Court's order granting HFL's motion for leave to file its First Amended Plea in Intervention. *See* [Dkt. 52] Plaintiffs now file this consolidated motion to dismiss for the purpose of formally preserving these arguments for appeal. This motion will address certain portions of the Court's previous ruling which Plaintiffs respectfully contend were erroneous.

I. MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO FRCP 12(B)(1)

FRCP 12(b)(1) authorizes a party to move to dismiss a claim for relief asserted in any pleading for "lack of subject matter jurisdiction." Fed. R. Civ. P. 12(b)(1). As the party asserting to invoke the Court's jurisdiction, HFL bears the burden to prove that this Court has jurisdiction with respect to the asserted intervention claim. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). "The court may dismiss a complaint for lack of jurisdiction based on: (1) the face of the complaint; (2) the complaint supplemented by undisputed facts from the record; and (3) the complaint supplemented by undisputed facts and the court's resolution of disputed facts."

Wiley v. Tex. State Univ., 2019 U.S. Dist. LEXIS 11176 at *6-7, 2019 WL 317247 (W.D. Tex. Jan. 24, 2019) (Hon. Pitman) (citing *Montez v. Dep't of Navy*, 392 F.3d 147, 149 (5th Cir. 2004)).

A. HFL's Intervention Claim Should Be Dismissed for Lack of Ripeness

1. Legal Standards Related to Ripeness

"Ripeness doctrine reflects Article III limitations on judicial power and prudential reasons for refusing to exercise jurisdiction." *Cochran v. United States*, 20 F.4th 194, 212 (5th Cir. 2021, *en banc*). "[R]ipeness is a constitutional prerequisite to the exercise of jurisdiction." *Lower Colo. River Auth. v. Papalote Creek II, L.L.C.*, 858 F.3d 916, 922 (5th Cir. 2017) (quoting *Shields v. Norton*, 289 F.3d 832, 835 (5th Cir. 2002)). When a claim is unripe, it must be dismissed for lack of subject matter jurisdiction under FRCP 12(b)(1). *See Roman Catholic Diocese of Dallas v. Sebelius*, 927 F.Supp.2d 406, 415 (N.D. Tex. 2013) ("Standing and ripeness are required elements of subject matter jurisdiction and are therefore properly challenged on a Federal Rule of Civil Procedure 12(b)(1) motion to dismiss"). *See also, Wiley v. Tex. State Univ*., 2019 U.S. Dist. LEXIS 11176 at *12-13, 2019 WL 317247 (W.D. Tex. Jan. 24, 2019) (Hon. Pitman).

"The ripeness inquiry focuses on two factors: (1) the fitness of the issue for judicial decision; and (2) the hardship to the parties of withholding court consideration." *Cochran*, 20 F.4th at 212 (internal quotations omitted). As the United States Supreme Court has explained, the ripeness doctrine's "basic rationale is to prevent the courts, through *avoidance of premature adjudication*, from entangling themselves in abstract disagreements." *See Cochran*, 20 F.4th at 212 (emphasis added) (quoting *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 148 (1967)). *See also Archibold-Garrett v. New Orleans City*, 893 F.3d 318, 321 (5th Cir. 2018) ("Ripeness enforces the Constitution's limit of federal court jurisdiction to 'cases or controversies' by preventing premature litigation").

"Ripeness separates those matters that are premature *because the injury is speculative and may never occur* from those that are appropriate for judicial review." *United States v. Harris*, 960 F.3d 689, 695 (5th Cir. 2020) (emphasis added) (quoting *United States v. Carmichael*, 343 F.3d 756, 761 (5th Cir. 2003). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998). *See also Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 581 (1985); *Dahl v. Vill. of Surfside Beach*, 2022 U.S. App. LEXIS 34858 at *5-8, 2022 WL 17729411 (5th Cir. Dec. 16, 2022); *Lower Colo. River Auth. v. Papalote Creek II, L.L.C.*, 858 F.3d 916, 925 (5th Cir. 2017); *Urban Developers LLC v. City of Jackson*, 468 F.3d 281, 295-96 (5th Cir. 2006).

2. HFL's Intervention Claim is Unripe as a Matter of Texas Substantive Law

In its order permitting HFL's intervention, the Court noted that the primary case relied upon by Plaintiffs (*Hoover Slovacek*) "does not mention ripeness." *See* -655 Case, [Dkt. 52] at 5. As discussed below, however, *Hoover Slovacek* and other cited cases directly address when such as cause of action accrues under Texas law. When a cause of action accrues is intrinsically linked to ripeness because "[i]t is axiomatic that a claim that *has not yet accrued is not ripe* for adjudication . . . ." *See Sid Richardson Carbon & Gasoline Co. v. Interenergy* Resources, 99 F.3d 746, 756 (5th Cir. 1996) (emphasis added). HFL's intervention claim is unripe because the claim *has not accrued* under substantive Texas law, as discussed below.

In cases involving terminated contingent fee lawyers, Texas law is markedly different than practically every other jurisdiction. Outside of Texas, the vast majority of states apply the "modern rule" that *prohibits* a terminated contingent fee lawyer from suing the former client to recover the full contingent fee under the contract. Outside of Texas, a terminated contingent fee lawyer is limited to recovering (at most) in *quantum meruit* for the value of legal services

actually provided.[1] Texas law, by contrast, allows a terminated contingent fee lawyer (in some circumstances) to sue to enforce the contingent fee provisions of the attorney contract following termination.[2] This Texas rule has been thoroughly criticized by courts outside Texas,[3] and the Fifth Circuit long ago expressly encouraged the Texas Supreme Court to change this rule to align Texas law with national standards.[4]

Because Texas law provides a terminated contingent fee lawyer with a cause of action against his former client that is not available elsewhere, the Texas Supreme Court's legal standards are intended to carefully balance the rights and interests of the contingent fee lawyer, former client, and important public interests in lawyer ethics and regulating the legal profession.[5] Under the Texas Supreme Court's legal standards, only a terminated contingent fee lawyer who is terminated *without cause* may enforce the contingent fee agreement against the former client; and the terminated contingent fee lawyer's recovery is limited by ethical rules that prohibit a lawyer from collecting an unconscionable fee.[6]

A fundamental axiom of Texas law in this context is notion that "the lawyer's rights, based on the contingent fee contract, are wholly derivative from those of his client." *Dow*

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[1] *See* Clausewitz, *On the Trail to Increased Client Protection: Attorney Contingent Fee Contract Termination in Light of* Hoover v. Walton, 29 St. Mary's L.J. 539 at 548-53 (2008) (discussing the "modern rule" applied by almost all states other than Texas and collecting cases). *See also* Richmond, *Turns of the Contingent Fee Key to the Courthouse Door*, 65 Buffalo L. Rev. 915 at 1000-03 and fn.500 (discussing the majority rule that "[w]hen a client discharges a lawyer without cause, the lawyer is entitled to recover in quantum meruit for the reasonable value of her services beforehand," and collecting cases).

[2] *See Mandell & Wright v. Thomas*, 441 S.W.2d 841, 847 (Tex. 1969).

[3] *See* fn.1, *supra* (citations collecting cases).

[4] *See Johnson v. California Real Estate Inv. Trust*, 912 F.2d 788, 788-89 (5th Cir. 1990) (enforcing contingent fee contract in favor of terminated contingent fee lawyer). In *Johnson*, the Fifth Circuit noted that it was "compelled to conclude that Texas law grants attorneys this remedy," and lamented that "this inequitable result is unavoidable" where the client "will receive less than $20,000 out of a $75,000 settlement, with the lawyers taking $50,000." *Id.* at 789. "Perhaps in the future Texas courts will see fit to reconsider the appropriate measure of damages in such suits as this for breach of contingent fee agreements." *Id.* at 789.

[5] *See generally See Hoover Slovacek LLP v. Watson*, 206 S.W.3d 557, 560-65 (Tex. 2006).

[6] *See id.* at 561-62.

Chemical Co. v. Benton, 357 S.W.2d 565, 567 (Tex. 1962). *See also Iron Tigga, LLC v. Law Offices of David W. Showalter, LLP*, 2022 Tex. App. LEXIS 7744 at *22, 2022 WL 11467825 (Tex. App.—Corpus Christi Oct. 20, 2022). For this reason, "a contingent fee lawyer is entitled to receive the specified fee only *when and to the extent* the client receives payment." *Hoover Slovacek,* 206 S.W.3d at 562 (emphasis added) (citing and quoting RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §35(2) (2000)). This legal rule is well-settled and consistently applied by Texas courts.[7]

Thus, a former contingent fee client can never breach the fee provisions of the contingent fee contract unless and until the former client *actually receives* money or property that may be subject to the contract. In other words, a contingent fee attorney's cause of action to enforce his legal rights under the fee provisions of a contingent fee contract *does not accrue* until the former client *actually receives* money or property that may be subject to the agreement. "It is well-settled law that a breach of contract claim accrues when the contract is breached." *Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002) (citing *Smith v. Fairbanks, Morse & Co.*, 102 S.W. 908, 909 (Tex. 1907)).

Until Plaintiffs in this case *actually receive* money or property that may be subject to HFL's now-terminated contingent fee agreement, HFL has no legal rights to enforce, it has no legal wrong that can be addressed, and it has not suffered any damages. HFL's intervention claim is premised entirely on speculative future events which may or may not occur. It is a textbook example of an unripe claim because HFL's purported claim has not yet accrued. Accordingly, it must be dismissed for lack of ripeness. *See, e.g., Texas*, 523 U.S. at 300 ("A

[7] *See, e.g. Levine v. Bayne, Snell & Krause, Ltd.,* 40 S.W.3d 92, 94 (Tex. 2001); *Wilkinson v. Susman*, 2020 Tex. App. LEXIS 8953 at *17-18, 2020 WL 6791057 (Tex. App.—Houston [14th] Nov. 19, 2020); *Douglas-Peters v. Cho, Choe & Holen, P.C.*, 2017 Tex. App. LEXIS 1836, at *39-40, 2017 WL 836848 (Tex. App.—Dallas [5th] Mar. 3, 2017); *Grantham v. J&B Sausage Co.*, 2016 Tex. App. LEXIS 5168 at *13-14, 2016 WL 2935874 (Tex. App.—Houston [14th] May 17, 2016).

claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.").

II. MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO FRCP 12(B)(1) – LACK OF FEDERAL SUBJECT MATTER JURISDICTION

A. Legal Standards

Under unambiguous U.S. Supreme Court precedent, when a proposed intervenor seeks relief that is different than the relief sought by the parties to an existing lawsuit, the Court must have an independent basis for Article III jurisdiction over the proposed intervention claim. *See Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 435 and 439-40 (2017). *See also Russell v. Harris County*, 2020 U.S. Dist. LEXIS 215333 at *11, 2020 WL 6784238 (S.D. Tex. Nov. 18, 2020); *Defense Distributed v. United States Dep't of State*, 2018 U.S. Dist. LEXIS 126388 at *9-10, Case No. 1:15-cv-372 (W.D. Tex. July 27, 2018) (Hon. Robert Pitman).

B. Arguments and Authorities

HFL has the burden to establish an *independent* basis for federal subject matter jurisdiction over its intervention claim because HFL seeks relief that is different than the relief sought by Plaintiffs in this lawsuit. Plaintiffs seek a judgment for money damages against Defendants City of Austin, Gutierrez and Serrato on Plaintiffs' claim for wrongful death under 42 U.S.C. §1983.[8] HFL's proposed intervention claim, by contrast, seeks to assert HFL's alleged rights arising under Texas contract law.[9] This Court recognized as much in its order permitting HFL's intervention. *See* -655 Case, [Dkt. 52] at p. 4 ("Because HFL seeks to recover under breach of contract, while Plaintiffs bring claims for violations of 42 U.S.C. §1983, HFL must establish federal jurisdiction."). This Court found supplemental jurisdiction exists because HFL's intervention claim met the requirements for intervention as of right under FRCP 42(a). *See id.* at

[8] *See* First Amended Complaints, -655 Case [Dkt. 26 at ¶¶93-98], -009 Case [Dkt. 12 at ¶¶95-101].
[9] *See* First Amended Pleas in Intervention, -655 Case [Dkt. 53 at ¶¶5-13 and Prayer].

p. 4-5. Respectfully, Plaintiffs contend that the Court's analysis and holding with respect to supplemental jurisdiction were erroneous as discussed below.

First, the Court does not have federal question jurisdiction over HFL's proposed intervention claim because a claim to enforce state law contract rights does not "aris[e] under the Constitution, laws, or treaties of the United States." *See* 28 U.S.C. §1331. *See also Box v. PetroTel, Inc.*, 33 F.4th 195, 202 (5th Cir. 2022). *See also Gunn v. Minton*, 568 U.S. 251, 257-65 (2013); *Singh v. Duane Morris LLP*, 538 F.3d 334, 337-40 (5th Cir. 2008).

Second, the Court does not have diversity jurisdiction over HFL's proposed intervention claim because HFL and Plaintiffs are all citizens of Texas.[10] *See* 28 U.S.C. §1332. *See also Carden v. Arkoma Assocs.*, 494 U.S. 185, 187 (1990) ("Since its enactment, we have interpreted the diversity statute [§1332] to require 'complete diversity' of citizenship") (citing and quoting *Strawbridge v. Curtiss*, 3 Cranch. 267 (1806)). *See also Mitchell v. Bailey*, 982 F.3d 937, 943 (5th Cir. 2020).

Third, the Court does not have supplemental jurisdiction over HFL's proposed intervention claim because HFL's claims are not "so related [to Plaintiffs' asserted claims] that they form part of the same case or controversy under Article III of the United States Constitution." *See* 28 U.S.C. §1367(a). As this Court previously acknowledged, HFL's proposed intervention claim arises from disputed facts that do not overlap substantially with the disputed facts involved with Plaintiffs' asserted claims under 42 U.S.C. §1983, and HFL seeks relief that is different than the relief sought by Plaintiffs. *See* Order, [Dkt. 52] at p.4. The Court, however, held that supplemental jurisdiction is established because Plaintiffs' §1983 claims arise under federal law and invoke federal question jurisdiction, and because HFL met the requirements for intervention as of right under FRCP 42(a). *See* -655 Case, [Dkr. 52] at pp. 4-5.

[10] *See* HFL's First Amended Pleas in Intervention, -655 Case [Dkt. 53 at ¶¶1-4].

By statute, a federal court's supplemental jurisdiction is limited to "claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of *the same case or controversy* under Article III of the United States Constitution." 35 U.S.C. §1367(a) (emphasis added). *See also Lucky Tunes #3, LLC v. Smith*, 812 Fed. Appx. 176, 183 (5th Cir. 2020) ("Supplemental jurisdiction over state-law claims is proper when they 'form part of the same case or controversy' as federal claims over which the district court has original jurisdiction"). "In other words, the state and federal claims must 'derive from a common nucleus of operative fact.'" *Id.* at 183 (citing and quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)).

Mere satisfaction of the requirements for intervention of as of right under FRCP 24(a)(2) is not sufficient to meet the requirements of supplemental jurisdiction, even where the Court has original federal question jurisdiction over pre-intervention claims.[11] FRCP 24(a)(2) does not require that the intervenor show the intervention claim arises from a "common nucleus of operative facts" or that it is part of the "same case or controversy" as the federal claim before the court. To the contrary, FRCP 24(a)(2) merely requires that an intervenor "claims an interest relating to the property or transaction that is the subject of the action . . . ." This is a different—and less stringent—standard than the test for supplemental jurisdiction under 28 U.S.C. §1367(a). An intervenor can "claim an interest" in the subject matter of the case, but if the intervenor's interest does not "arise from a common nucleus of operative facts" then the requirements for supplemental jurisdiction are not met.[12]

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[11] The Federal Rules make abundantly clear that the rules themselves are not a source of a district court's subject matter jurisdiction. *See* FRCP 82 ("These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.").

[12] The court's order permitting intervention cites an unpublished case (*Chambers*) for the proposition that the court has federal question jurisdiction over the pre-intervention claims, meeting the requirements for intervention under FRCP 24(a) will "ordinarily" give rise to supplemental jurisdiction. *See* [Dkt. 52] at p. 5. While this "ordinarily" may be true, it is not always so. This legal issue was not presented in *Chambers*, and the quotation relied upon by the Court is

That is precisely the case for HFL's intervention claim. HFL's alleged interest in the subject matter of this litigation arises under Texas contract law. The facts and circumstances giving rise to HFL's alleged interest in this case, however, have no factual overlap at all with the facts and circumstances that give rise to Plaintiffs' claims under §1983 against the City of Austin and the individual Defendants. Because there is no factual overlap whatsoever, this Court does not have supplemental jurisdiction over HFL's intervention claim.

As discussed in Plaintiffs' previous response to HFL's motion for leave to intervene, when a terminated contingent fee attorney seeks to intervene in the former client's ongoing case, the attorney's contract claim is not part of the same "case or controversy" as the former client's claim for purposes of supplemental jurisdiction.

When "[a]n attorney who has formerly represented the plaintiff and intervenes for recovery of attorney's fees from the underlying suit . . . ***[s]uch claims are not entitled to supplemental jurisdiction under 28 U.S.C. §1367*** and the claim must independently satisfy the requirements for federal diversity jurisdiction under 28 U.S.C. §1332." *Tolliver v. U-Haul Co.*, 2017 U.S. Dist. LEXIS 221223 at *3-4, Case No. 09-cv-313 (W.D. La. June 8, 2017) (emphasis added). Courts within the Fifth Circuit have frequently denied intervention to a terminated contingent-fee lawyer who cannot establish federal jurisdiction over the proposed intervention claim. *See, e.g. Samuels v. Twin City*, 602 Fed. Appx. 209, 210-11 (5th Cir. 2015) (affirming district court's denial of attorney's motion to intervene due to lack of jurisdiction); *Griffin v. Lee*,

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dicta in the opinion. *See Chambers Med Found. v. Chambers*, 236 F.R.D. 299, 302 (W.D. La. 2006). Moreover, the *Chambers* opinion cites no authority in support of the proposition. *See id.* It is erroneous for the Court to generalize from this single *dicta* sentence that HFL's satisfaction of FRCP 24(a) for intervention *necessarily* establishes supplemental jurisdiction over HFL's intervention claim. *See* Wright & Miller, FEDERAL PRACTICE AND PROCEDURE (CIVIL) §1917 ("Rule 24 does not and cannot speak to this problem. It states under what circumstances intervention is proper as a matter of procedure but intervention still must be denied, ***though all of the requirements of Rule 24 are met***, if the federal court cannot take jurisdiction with regard to the intervenor") (emphasis added). The plethora of cases cited herein dismissing intervention by contingent fee lawyers due to lack of supplemental jurisdiction prove the point conclusively.

621 F.3d 380, 388 (5th Cir. 2010) (reversing decision to permit attorney intervention where district court lacked diversity jurisdiction over the intervention claim); *Patterson v. Corvel Corp.*, 2021 U.S. Dist. LEXIS 168456 at *5-7, Case No. 21-cv-1305 (W.D. La. Aug. 12, 2021) (denying attorney's intervention for lack of diversity jurisdiction); *Causey v. State Farm Section I*, 2018 U.S. Dist. LEXIS 99855 at *5-7, 2018 WL 2980066 (E.D. La. 2018) (same); *Tolliver v. U-Haul Co.*, 2017 U.S. Dist. LEXIS 221223 at *3-4, Case No. 09-cv-313 (W.D. La. June 8, 2017) (same).

These cases conclusively show that a terminated contingent fee attorney does not establish supplemental jurisdiction merely by meeting the requirements for intervention under FRCP 24(a). The court has no basis for subject matter jurisdiction over HFL's intervention claim, and it should be dismissed.

III. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FRCP 12(B)(6)

A. Legal Standards

Under FRCP 12(b)(6) a district court may dismiss a complaint[13] for "failure to state a claim upon which relief can be granted." *See* Fed. R. Civ. P. 12(b)(6). In deciding a 12(b)(6) motion to dismiss, a "court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). "To survive a Rule 12(b)(6) motion to dismiss, a complaint . . . must provide the plaintiff's grounds for entitlement to relief—including factual allegations that when assumed to be true raise a right to relief above the speculative level." *Cuvillier v. Taylor*, 503 F.3d 397, 401

[13] A motion to dismiss under FRCP 12(b)(6) may be made against any "claim for relief in any pleading . . ." Fed. R. Civ. P. 12(b)(6). HFL's First Amended Plea in Intervention is the equivalent of a complaint for purposes of Rule 12(b)(6). *See, e.g., OHA Inv. Corp. v. Schlumberger Tech. Corp. (In re ATP Oil & Gas Corp.)*, 888 F.3d 122, 124-25 (5th Cir. 2018) (affirming dismissal of plea in intervention under Fed. R. Civ. P. 12(b)(6)). *See also* FRCP 24(c) (a motion to intervene requires "a pleading that sets out the claim or defense for which intervention is sought"); FRCP 7(a) (providing an exclusive list of the types of pleadings permitted under the federal rules).

(5th Cir. 2007). "[P]laintiffs must allege facts ***that support the elements of the cause of action*** in order to make out a valid claim." *Webb v. Morella*, 522 F.Appx. 238, 241 (5th Cir. 2013) (emphasis added) (quoting *City of Clinton, Ark. v. Pilgrim's Pride Corp.*, 632 F.3d 148, 152-53 (5th Cir. 2010)).

B. Arguments and Authorities

"In Texas, the essential elements of a breach of contract action are: (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach." *Langlois v. Wells Fargo Bank N.A.*, 581 Fed. Appx. 421, 425 (5th Cir. 2014) (quoting *Smith Int'l, Inc. v. Egle Grp., LLC*, 490 F.3d 380, 387 (5th Cir. 2007). HFL's intervention claim must be dismissed because its First Amended Plea in Intervention fails to allege facts supporting elements #3 and #4 for breach of contract claim under Texas law.

First, HFL's First Amended Plea in Intervention fails to allege element #3—a breach of contract. HFL's pleading *never* asserts that the Gonzales Plaintiffs have breached HFL's terminated contingent fee agreement. *See* Dkt. 53 at ¶¶1-13 (failing to allege that the Gonzales Plaintiffs have breached the contract). Not could HFL allege a breach of contract. As discussed above, a contingent fee attorney is not entitled to receive the contingent fee *unless and until* the client actually receives money or property that is subject to the contingent fee agreement. Because the Gonzales Plaintiffs have not recovered any money or property as a result of their §1983 lawsuits, they cannot have breached HFL's contingent fee agreement as a matter of law.

Second, HFL's First Amended Plea in Intervention fails to allege element #4—damages incurred as a result of the breach of contract. Because HFL's pleading does not allege any contractual breach, HFL also cannot allege that it has suffered damages resulting from a breach. HFL does not even try. Its pleading is completely devoid of any allegation that HFL has suffered damages from an alleged breach of contract. *See* Dkt. 53 at ¶¶1-13 (failing to allege damages

caused by a breach of contract). HFL's pleads no more than that it may suffer damages in the future based on speculative future events that may or may not come to pass. These allegations are insufficient to satisfy the damages element of a breach of contract claim.

HFL's First Amended Plea in Intervention fails to state a claim upon which relief can be granted, and therefore it must be dismissed under FRCP 12(b)(6).

Dated: August 22, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Donald Puckett
Donald Puckett

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. **THE CITY OF AUSTIN**, *Defendants*.	§	**Case No. 1:22-cv-00655-RP** **JURY TRIAL REQUESTED**
JESSICA ARELLANO, Individually and as Next Friend of Z.A., a minor child, *Plaintiff*, v. **THE CITY OF AUSTIN**, **GABRIEL GUTIERREZ,** and **LUIS SERRATO** *Defendants*.	§	**Case No. 1:23-cv-00008-RP** **JURY TRIAL REQUESTED**
ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. **LUIS SERRATO**, and **GABRIEL GUTIERREZ**, *Defendants*.	§	**Case No. 1:23-cv-00009-RP** **JURY TRIAL REQUESTED**

PLAINTIFFS' FRCP 38(B) DEMAND FOR A JURY TRIAL ON HFL'S FIRST AMENDED PLEA IN INTERVENTION CLAIM

To the Honorable Court:

Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Gonzales, pursuant to Fed. R. Civ. P. 38(b), hereby demand a jury trial on all issues so triable with respect any and all claims, causes of action and/or issues raised by the First Amended Plea in Intervention filed by Hendler Flores Law PLLC [Dkt. 53] (and any future amendment or supplement thereto).

Dated: August 22, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Donald Puckett
Donald Puckett

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and **ELIZABETH HERRERA** (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G.,	§	**Case No. 1:22-cv-00655-RP**
Plaintiffs,	§	**JURY TRIAL REQUESTED**
v.	§	
City of Austin,	§	
Defendants.	§	

PLAINTIFFS' SECOND AMENDED COMPLAINT

To the Honorable Court:

1. This is a lawsuit about the policies and practices of the City of Austin that caused Austin police officers Luis Serrato and Gabriel Gutierrez to fatally shoot Alex Gonzales, Jr. ("Alex") on January 5, 2021, resulting in Alex's tragic and untimely death.

2. Alex's parents, Alex Gonzales, Sr., and Elizabeth Herrera (collectively the "Plaintiffs") bring this lawsuit to vindicate their son's civil rights and to hold the responsible parties accountable. Each Plaintiff asserts claims in his or her individual capacity as a wrongful death beneficiary of Alex Gonzales Jr. under Texas law. Each Plaintiff also asserts claims as "Next Friend" on behalf of minor child Z.A.G., who also is a wrongful death beneficiary of Alex Gonzales, Jr. under Texas law.[1]

[1] Plaintiffs and Plaintiffs counsel do not purport to represent the interests of Z.A.G. by asserting Z.A.G.'s wrongful death claims in this action, as stated in Plaintiffs' previously filed Notice of Non-Representation Concerning Minor Child Z.A.G. *See* Dkt. No. 45, filed on June 21, 2023. Plaintiffs also previously filed a Motion for Appointment of Guardian Ad Litem Pursuant to

I. PARTIES

3. Plaintiff Alex Gonzales, Sr. is a citizen of Texas and a resident of Bastrop County, Texas. His son, Alex Gonzales, Jr, was also from Bastrop County, Texas. As Alex Gonzales, Jr.'s biological father, Plaintiff Alex Gonzales, Sr. is a wrongful death beneficiary and, as such, brings this wrongful death action in his individual capacity pursuant to Texas Civil Practice and Remedies Code §§ 71.002(b), 71.004(b) and 42 U.S.C. §§ 1983, 1988.

4. Plaintiff Elizabeth Herrera (a/k/a Elizabeth Gonzales) is a citizen of Texas and a resident of Bastrop County, Texas. Her son, Alex Gonzales, Jr, was also from Bastrop County, Texas. As Alex Gonzales, Jr.'s biological mother, Plaintiff Elizabeth Herrera is a wrongful death beneficiary and, as such, brings this wrongful death action in her individual capacity pursuant to Texas Civil Practice and Remedies Code §§ 71.002(b), 71.004(b) and 42 U.S.C. §§ 1983, 1988.

5. Minor child Z.A.G. ("Z.A.G.") is a person under the age of eighteen (18) who is a citizen of Texas and, on information and belief, is a resident of Travis County, Texas. As the presumed biological child of Alex Gonzales, Jr., Z.A.G. is a wrongful death beneficiary pursuant to Texas Civil Practice and Remedies Code § 71.004(b). Each Plaintiff has standing to assert wrongful death claims on behalf of Z.A.G. pursuant to Texas Civil Practice and Remedies Code § 71.004(b). Each Plaintiff asserts claims on behalf of Z.A.G. in his or her capacity as "Next Friend" of Z.A.G. pursuant to Texas Civil Practice and Remedies Code §§ 71.002(b), 71.004(b) and 42 U.S.C. §§ 1983, 1988. Z.A.G. is a necessary party to this action because, under Texas law, the claims of all potential wrongful death beneficiaries must be joined in a single action.[2]

FRCP 17(c)(2) in order to ensure that the interests of Z.A.G. are adequately represented in this lawsuit. *See* Dkt. No. 30, filed on April 12, 2023.

[2] *See Ordonez v. Abraham*, 545 S.W.3d 655, 667 (Tex. App. – El Paso 2017) ("Texas undoubtedly requires that only one suit be filed to address the alleged negligent death of a person."); *Avila v. St. Luke's Lutheran Hosp.*, 948 S.W.2d 841, 850 (Tex. App. – San Antonio

6. Defendant City of Austin (herein the "City" or "Austin") is a Texas municipal corporation in the Western District of Texas which funds and operates the Austin Police Department ("APD") and the APD Training Academy.

II. JURISDICTION AND VENUE

7. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. §§ § 1331 and 1343.

8. The City is subject to general personal jurisdiction because it is a Texas municipality.

9. This Court has specific personal jurisdiction over the City because this case involves its conduct that occurred in Austin, Texas.

10. Venue for this case and the asserted causes of action are proper in the Western District of Texas, Austin Division pursuant to 28 U.S.C. § 1391(b) because all or a substantial portion of the events or omissions giving rise to each Plaintiff's claims occurred in the Western District of Texas, Austin Division.

III. FACTUAL ALLEGATIONS

A. Through its policies, practices, and customs, Austin trained its police officers to adopt a paramilitary culture that caused them to adopt a "warrior mindset" and an "us versus them" approach to policing that permitted, encouraged, and tolerated excessive force.

11. For many years prior to the fatal shooting of Alex Gonzales, Jr. on January 5, 2021, the City of Austin trained its police officers in ways that expressly and implicitly encouraged and approved of the use of excessive force in policing encounters with Austin residents. The Austin Police Department Training Academy used a training curriculum centered upon "paramilitary"

1997) ("The [wrongful death] act contemplates that only one suit shall be brought, which shall be for the benefit of all parties entitled to recover.").

training techniques that taught and reinforced a "paramilitary culture" throughout the APD. The APD Training Academy taught the officers to adopt a "warrior mindset" that encouraged an "us versus them" approach to citizen encounters during policing.

12. For many years prior to January 5, 2021, APD's cultivation of a paramilitary culture and promotion of the warrior mindset among APD officers was the predominant theme of all aspects of APD's officer training, beginning with cadets at APD's Training Academy, continuing through field training, and reinforced repeatedly in daily officer briefing exercises, ongoing officer training, and through chain-of-command review of officers' performance during real-world policing encounters.

13. APD's training and cultivation of a "warrior mindset" among its officers has long been the predominant theme of APD's officer training, and the "warrior mindset" has long been a central feature of APD's officer culture. APD's warrior mindset training, deeply instilled in each of its patrol officers, included at least the following specific elements as an integral part of its police training for many years prior to the death of Alex Gonzales, Jr.:

a. APD trained its officers and cultivated a warrior mentality that encouraged and required each officer to place his or her own individual safety above all other concerns. APD's officers were explicitly trained that the first rule of law enforcement is to make sure that the officer goes home at the end of every shift. APD's police officer training repeatedly emphasized the utmost importance of each officer protecting his or her own life and physical safety. APD trained its officers to place self-preservation ahead of every other concern in practically every policing scenario. APD placed officer self-protection at the core of its tactical training and field training exercises. In after-action reviews of actual policing situations, APD

officers were frequently reprimanded and disciplined for their decisions *not* to use force if the decision might have elevated a risk of harm to the officer in the scenario. APD explicitly trained its officers—constantly and repeatedly—that self-protection was the prime directive of APD police work.

b. APD trained its officers to have a warrior mentality that viewed the job of street-patrol duty to be a highly dangerous activity, and to be mindful that each officers' life and physical safety were *constantly* at risk. APD trained its officers that any ordinary encounter with any citizen could turn into a lethal force situation at a moment's notice. APD routinely showed videos to cadets that set forth sad and emotional stories of police officers that had been killed in the line of duty. APD's intense training on the potential dangers to officer safety was intended to instill and did instill a deep sense of fear into each APD officer. APD's training relied on and purposefully utilized this fear to push each officer further into APD's intended warrior mindset by triggering strong self-preservation instincts in each officer.

c. APD's officers were taught and encouraged to view the streets of Austin as a battlefield, and that the activity of policing was a battle that the officers must "win" to ensure the officer's own survival. Under this training, APD trained its officers in ways that caused and encouraged them to view ordinary citizens in everyday interactions as enemy combatants that must be dominated and controlled. APD's training caused and encouraged officers to adopt an "us versus them" mentality toward the citizens they are sworn to protect and serve.

d. APD's tactical training for citizen encounters placed domination of physical space and control of the civilian as the first and primary objective in training and exercises

related to police / citizen encounters. APD trained its officers to set the tone for citizen encounters by immediately establishing physical dominance and command over any scene. APD officers were trained that any citizen's failure to immediately accede to the officer's verbal commands and physical control of the space equates to non-compliance, immediately allowing the officer to take more aggressive steps to establish the officer's domination of the scene and control of the civilian.

e. APD trained its officers to have a warrior mindset that was constantly mindful of potential hidden dangers. APD trained its officers constantly to scan for small signs or cues to alert for the possible presence of a weapon or the possible non-compliant intent of a civilian. APD trained its officers to alert to potential danger for signs that could also be innocuous, such as a bulge in a person's waistband or an inflection in a person's voice. APD's training in this regard reinforced and intensified the fearful aspects of the warrior mindset described above, by teaching officers that their survival instincts should kick-in based on small and innocuous observations.

f. APD promoted its warrior mindset by training its officers with course materials, videos, field training exercises and simulations that placed the mantra of "Action Beats Reaction" as the centerpiece of all tactical training for policing. Under Action Beats Reaction principles, APD officers were taught that a subject would gain a tactical advantage if the officer waited to react to a subject's threatening actions. Under Action Beats Reaction principles, APD officers were taught to gain a tactical advantage over civilian subjects by acting first, in anticipation of threats or potential threats, before the civilian subject is able to take a first threatening action.

g. APD taught its officers to use Action Beats Reaction principles even in situations

of "uncertain danger"—in both lethal and non-lethal force situations—even if the officer is uncertain whether a civilian actually presents a danger at all. APD's lethal force training expressly taught and *encouraged* officers to be ready and willing to use lethal force in situations where they have a "reasonable belief" that a suspect *might* pose a *possible* lethal force risk to the officer or others.

h. APD reinforced the Action Beats Reaction principles by using "force continuum" or "force ladder" principles as a primary component of its officer use of force training. These force continuum principles expressly permitted and encouraged APD officers to stay "one step ahead" of the civilian subject upon whom an officer is using force in any policing situation. APD's "force ladder" training, coupled with its Action Beats Reaction training, taught and encouraged officers to move up the force ladder at every opportunity, with any de-escalation or tactical retreat training drowned out by other aspects of APD's warrior mindset teachings.

i. APD intentionally made its warrior mindset training and emphasis on "Action Beats Reaction" so pervasive in its officer training that the warrior mindset and associated tactical lessons were intended to become instinctively ingrained in each officer. For many years, APD's training academy used a military boot-camp style of training in which rigorous physical exercises and physical combat training were combined with a strict military chain-of-command style of interaction with classroom instructors and others. APD adopted these military-style training techniques for the purpose of fostering a warrior mindset in each of its officers that is intended by APD to be instilled deeply in each officer's psyche—at every moment, all the time.

14. For many years prior to the death of Alex Gonzales, Jr. on January 5, 2021, APD incorporated and reinforced its warrior mindset training in connection with its officer training regarding the use of lethal force and use of firearms. APD lethal force and firearms training for its officers included at least the following specific elements as an integral part of its police training:

a. APD taught and trained its officers that an officer's reluctance to use lethal force or hesitation to use lethal force would put the officer's own life and safety at risk as well as the life and safety of other officers. APD taught and trained its officers that, in cases where an officer was actually shot or killed in the line of duty, in almost all such cases the officer himself or herself (as well as other officers on scene) had failed to fire a weapon prior to the officer being shot. APD used these teachings and trainings to expressly encourage its officers to be "ready and willing" to use lethal force at all times, without hesitation.

b. APD incorporated "Action Beats Reaction" principles into its lethal force and firearms training to train its officers that they can and should use lethal force in a variety of situations before a lethal force threat to themselves or others has fully materialized. APD's "force ladder" training taught officers that they were permitted to use lethal force in situations where an actual lethal force threat from a subject had not yet materialized. APD trained and encouraged its officers to use lethal force even in situations of uncertain danger, where the officer does not have evidence to know that a lethal force danger is present at all.

c. APD's lethal force and firearms instruction taught and trained its officers that once an officer began using lethal force against a subject, the officer must continue to use lethal force by continuing to fire rapid shots at the targe (typically all shots

loaded in the magazine of the weapon) until the officer was sure that the "threat is eliminated" (*i.e.* until the civilian subject is dead or fully incapacitated).

d. The above-referenced aspects of APD's lethal force and firearms training were so pervasive in APD's training that it had the effect of drowning out any contrary training with respect to de-escalation training or tactical training that might reduce the need for officers to use lethal force in a variety of situations.

15. The City of Austin and APD knew well before the death of Alexander Gonzales, Jr. that APD's police training had long been the product of paramilitary training techniques that fostered a deeply-ingrained warrior mindset in APD's police officers (including but not limited to the specific aspects recited above), and that APD's paramilitary warrior mindset police training and culture was to blame for frequent use of excessive force by APD officers against civilians.

16. On May 22, 2020, Dr. Sara Villanueva delivered to then-Chief Brian Manley a Review Analysis and Strategic Plan of the Austin Police Department Training Academy (the "Villanueva Report"). At that time, Dr. Villanueva was the Organizational Development and Training Manager at the Austin Police Department. A copy of the Villanueva Report is attached to this complaint as Exhibit A, and it is incorporated herein by reference. On information and belief, Dr. Villanueva prepared and delivered her report within the scope of her authority as an employee and agent of the City of Austin.

17. After conducting a thorough "SWOT analysis" (assessing strengths, weaknesses, opportunities, and threats) of the APD Training Academy, Dr. Villanueva reported the following findings:

a. "[The] APD Training Academy operates under a paramilitary training format . . . ." (Exhibit A, page 7 of 18);

b. "There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-police services model. A growing body of research has shown that paramilitary-structured academies do not align well with the principles of community policing and problem solving which are based on collaborations and partnerships." (Exhibit A, page 7 of 18);

c. "The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime." (Exhibit A, page 10 of 18); and

d. "The warrior mindset, and the fear that drives it, must change." (Exhibit A, page 10 of 18.)

18. Each of the above-quoted findings from the Villanueva Report was true.

19. On December 29, 2020, Austin Chief Equity Officer Brion Oaks delivered a memorandum (herein the "Oaks Memorandum") to the Austin Mayor and City Council (via Nuria Rivera-Vandermyde) for the purpose of "provid[ing] a brief overview of two bodies of work documenting racial inequities within the Austin Police Department (APD)." (Exhibit B, page 1 of 152.) The first body of work was a series of evaluations prepared by a third-party evaluator, The Peace Mill Research and Communications (herein the "Peace Mill Evaluations"). (Exhibit B, pages 4-107 of 152.) The second body of work was a report prepared by third-party evaluator Joyce James Consulting (herein the "Joyce James Report"). (Exhibit B, pages 108-152 of 152.) The Peace Mill Evaluations and the Joyce James Report each were prepared at the direction and authorization of the Austin City Council. The Oaks Memorandum was prepared and delivered within the scope of Brion Oaks authority as an employee of the City of Austin. A copy of the Oaks

Memorandum, including copies of the Peace Mill Evaluations and the Joyce James Report, is attached to this complaint as Exhibit B, and they are incorporated herein by reference.

20. The Peace Mill Evaluation of the APD Training and Recruiting Divisions reported the following findings:

a. "Multiple former cadets expressed concerns that training division staff foster a culture of violence, embracing brutality over wisdom throughout the academy experience. . . . Multiple former cadets allege that *the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation*." (Exhibit B, pages 18–19 of 152, emphasis added);

b. "The term *culture of violence* describes institutionally imposed conditions that 'can be used to justify or legitimize direct or structural violence.' . . . [T]he qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied [for the APD Training Academy]." (Exhibit B, page 18 of 152, footnote 8, emphasis in original); and

c. "According to interview respondents, many of the academy's trainers rely overwhelmingly on 'violent', 'brutal', 'traumatizing' practices designed to 'manufacture soldiers' rather than produce community-driven law enforcement professionals adept at de-escalation." (Exhibit B, page 20 of 152.)

21. Each of the above-quoted findings from the Peace Mill Evaluation was true.

22. On January 18, 2021, a panel of Austin community members delivered a Community Report that provided a comprehensive assessment of training videos used in the training curriculum of the APD Training Academy. A copy of the report is attached to this

complaint as Exhibit C, and it is incorporated herein by reference. The Community Report was prepared with the authorization of the Austin City Council pursuant to Council Resolution No. 20191205-066 dated December 5, 2019 (attached to this Complaint as Exhibit F).

23. The Community Report provides an assessment of videos and training materials that had been in use within the APD Training Academy for many years prior to the shooting of Alex Gonzales, Jr. The Community Report states that "[t]he videos we reviewed were chosen by leadership from the Austin Police Department and the Office of Police Oversight." (Exhibit C, page 3 of 26.)

24. The Community Report stated the following findings:

a. "Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed." (Exhibit C, page 6 of 26);

b. "One of the more pervasive biases we observed is the us-versus-them mindset. This bias existed at a fundamental, pervasive level, further informing other biases with respect to race, ethnicity, gender, and ability, and affected officers of color and female officers in the same or similar ways as White male officers." (Exhibit C, page 14 of 26);

c. "The us-versus-them bias was explicit in some of the videos—i.e. police work is 'the deadly game of cops and robbers'; however, much of it was implicit. This bias was manifested in the following ways:

- An enhanced focus on officer safety over the safety of the community as a whole,
- A 'warrior' versus 'service' mentality in which officers see themselves as

the 'good guys' and the public they interact with as 'bad guys,'

. . .

- Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled."

(Exhibit C, pages 14-15 of 26);

d. "Primarily this bias manifested in a focus on police officers 'winning' by overcoming resistance and threat from the community or by prevailing in court or in grievance and complaint hearings. . . . The focus turns from compassion to conquest as officers see community as a roadblock in their effort to control and 'win.' In the end, communities will continue to suffer, as there is no viable way to 'win' – not only against police officers, but also against the system that continues to protect police officers in this us-versus-them framework." (Exhibit C, page 15 of 26);

e. "We also observed evidence of the growing militarization of policing in the videos. . . . Many police organizations actively propagate the idea that our cities are a kind of 'war zone' rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of 'bad actors' which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy." (Exhibit C, page 15 of 26);

f. "Connected to both increasing militarism and the us-versus-them dichotomy, which we believe is at the heart of the repeated instances of police overreactions to threat

and use of excessive force, is what researchers have called the 'danger imperative'—a belief in a constant and prevalent danger for police officers. . . Several of the descriptions of the training materials in use at the APD academy state this plainly." (Exhibit C, page 16 of 26);

g. "[O]fficers are trained to view every encounter as potentially life-threatening." (Exhibit C, page 17 of 26);

h. "One of the training officers acknowledged that there has been an overemphasis on an officer 'going home at the end of the shift' for some time in policing and police training. The training we viewed, particularly the training highlighting the danger imperative, definitely emphasized the safety of the officer above all else." (Exhibit C, page 17 of 26); and

i. "From what we observed in videos and with conversations with instructors, we contend that the structure of policing as a whole, particularly the focus on control and the warrior mentality, reinforces the us-versus-them dichotomy in ways that tend toward escalation and grievous mistakes in judgment." (Exhibit C, page 18 of 26).

25. Each of the above-quoted findings from the Community Report was true.

26. On February 26, 2021, third-party consultant Kroll Associates, Inc. delivered to the City of Austin (via Director of Austin Office of Police Oversight Farah Muscadin and Deputy City Manager Nuria Rivera-Vandermyde) a Memorandum regarding Kroll's Preliminary Assessment of the Austin Police Training Academy (herein the "Kroll Preliminary Assessment"). The Kroll Preliminary Assessment is attached to this complaint as Exhibit D and is incorporated herein by reference. The Kroll Preliminary Assessment was prepared pursuant to the authorization of the

Austin City Council.

27. Despite the dramatic findings by Dr. Villanueva and the Community Review panel, persons with the APD training academy have been resistant to changing the police training curriculum. The Kroll Preliminary Assessment states:

a. "The majority of APD and Academy leadership have questioned the assertion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a 'warrior' mindset, which leads to an 'us vs. them' mentality of officers on the front lines fighting crime." (Exhibit D, page 5 of 22); and

b. "When asked if the Academy is proactively revisiting the existing curriculum and lesson plans . . . the answer provided is that Academy instructors and supervisors are awaiting further guidance and input from the new ODTM, whenever that person is hired to replace Dr. Villanueva." (Exhibit D, page 8 of 22.)

28. Each of the above-quoted statements from the Kroll Preliminary Assessment was true.

29. On April 23, 2021 third-party consultant Kroll Associates, Inc. delivered to the City of Austin, Office of Police Oversight / City Manager's Office their Final Report on the Austin Police Department: Review and Assessment of Training Academy (herein the "Kroll Final Report"). The Kroll Final Report is attached to this complaint as Exhibit E and is incorporated herein by reference. The Kroll Final Report prepared pursuant to the authorization of the Austin City Council.

30. The Kroll Final Report states:

a. "The Academy at present remains a predominantly paramilitary training model."

(Exhibit E, page 6 of 113);

b. "[I]n the greater context of police work, seeing oneself primarily as a 'warrior' is a precarious mindset. . . . [W]hen officers are taught to see citizens as potential threats to their life, they learn to fear them. Thus, interactions between police and the community often start with suspicion, vigilance and caution, and positive encounters become infrequent, if not impossible. Furthermore, since officers are taught to physically control their space and react forcefully to noncompliance, they sometimes escalate otherwise peaceful encounters, making situations more dangerous for both sides." (Exhibit E, page 16 of 113);

c. "Other components of the military model may also be inconsistent with the demands of modern policing. . . . [T]he use of recruiting videos and web content that routinely feature high-action sequences and appeals to strength and violence over service can send the wrong message about the nature of policing in a progressive urban environment." (Exhibit E, page 16 of 113);

d. "Using a different training approach, police academies can establish a guardian-centric culture that focuses on service to the community rather than fighting crime, while still preparing officers to effectively react and respond to crisis situations. . . . Experts contend that this training style—which emphasizes strengthening officers' critical decision-making skills, communication, and emotional intelligence skills—is better associated with the skills and tactics necessary to handle complex situations that officers are likely to face in the field." (Exhibit E, page 17 of 113); and

e. "APD leadership has expressed its belief to Kroll that some aspects of a

> paramilitary structure are an essential component of police culture . . . . Indeed, the majority of APD and Academy leadership we spoke with questioned the suggestion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a 'warrior' mindset, which leads to an 'us vs. them' mentality of officers on the front lines fighting crime." (Exhibit E, page 49 of 113.)

31. Each of the above-quoted statements from the Kroll Final Report was true.

32. The City of Austin has long known, for many years prior to the death of Alex Gonzales, Jr., that its policies, practices, and customs (including but not limited to the police training described above) caused and encouraged a disproportionate use of excessive force targeted towards Hispanic and Black persons. The encouragement and toleration of the use of excessive force in a racially discriminatory manner was particularly ingrained in the training methods and training materials used at the Austin Police Department Training Academy, both for new cadet training and ongoing officer training.

33. On December 5, 2019 the Austin City Counsel adopted Resolution No. 20191205-066 ("Resolution 66"). A copy of Resolution 66 is attached hereto as Exhibit F and is incorporated herein by reference. The Austin City Counsel duly adopted resolution 66 pursuant to its legal authority. Resolution 66 states in relevant part:

a. "[T]he City of Austin acknowledges that the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy." (Exhibit F, page 1 of 12);

b. "[T]he Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans

and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates." (Exhibit F, page 1 of 12); and

c. "[P]atterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust . . . and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum." (Exhibit F, page 4 of 12.)

34. Each of the above-quoted statements from Resolution 66 was true.

35. Resolution 66 directed the Austin City Manager to "initiate a comprehensive, multi-pronged investigation and evaluation of the extent to which forms of bigotry and discrimination are present in the protocols, practices, and behaviors of the officers of the Austin Police Department." (Exhibit F, page 4 of 12.)

36. Resolution 66 further directed the City Manager to "initiate an audit of the Austin Police Department's training materials, course/section descriptions and duration, and description of any other procedures (e.g. detailed descriptions of scenarios) administered to cadet classes and to active officers related to training on communication strategies, cultural competency, acknowledging and addressing bias, use of force, de-escalation, search, proactive policing, mental health response, protocols for non-English speaking persons, protocols for disabled persons, recognizing resistance and the rules and procedures that define resistance and their evaluation protocols, as well as the course/section content and duration of all other coursework required at the cadet academy and their evaluation protocols." (Exhibit F, page 9–10 of 12).

37. On December 28, 2020, the Peace Mill Evaluation of APD Training and Recruiting Divisions (described above) stated the following findings:

a. "Recent reports from sources including the Office of Police Oversight and APD's own internal investigator offer even further evidence that there are serious gaps in the department's attempts to address racism and inequity in policing." (Exhibit B, page 20 of 152);

b. "The culture of the APD training academy, detailed firsthand by the courageous respondents who were interviewed for this research, conflicts directly with the department's recruiting and public relations campaigns, which proclaim a police department focused on diversity, equity and community engagement. APD's own data reveals repeated failures at achieving these goals." (Exhibit B, page 22 of 152);

c. "Further interviews with APD division leaders from multiple divisions indicate that the department's commitment to the equity assessment process has been similarly superficial." (Exhibit B, page 23 of 152); and

d. "In fact, it is hard to identify any meaningful, measurable commitments to equitable outcomes when assessing the division's responses [to the City's Equity Assessment Tool]. The division's staff is not diverse and there are no specific or measurable standards for ensuring equitable practices in day-to-day operations." (Exhibit B, page 34 of 152.)

38. Each of the above-quoted findings from the Peace Mill Evaluation was true.

39. On December 28, 2020, the Peace Mill Evaluation of APD Internal Affairs and Professional Standards Division (described above) stated the following findings:

a. "APD's Internal Affairs and Professional Standards division has few strategies and

protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's ability to implement principles of diversity, equity and inclusion." (Exhibit B, page 52 of 152);

b. "If the Training Division, which fails tremendously to implement principles of equity, does not graduate diverse classes from its academy, Internal Affairs is, by extension, prohibited from accessing a diverse candidate pool. Perhaps more than any other example, this highlights the need for deep and systemic changes at APD." (Exhibit B, page 52 of 152); and

c. "Evidence from the Internal Affairs and Professional Standards division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes." (Exhibit B, page 53 of 152.)

40. Each of the above-quoted findings from the Peace Mill Evaluation was true.

41. On January 18, 2021, the Community Report (described above) offered the following findings with respect to its assessment of the videos and other training materials being used by the APD Training Academy:

a. "***[B]y far the most alarming pattern we witnessed*** [in the training videos] ***was the harmful stereotypes perpetuated against Black and Brown communities***. The videos shed light on the disproportionate interactions police have with Black, Indigenous, and Brown communities that result in violence and death." (Exhibit C, page 4 of 26, emphasis in original);

b. "Many of the videos showed People of Color, and in particular, Black people, being

brutalized and/or their well-being utterly disregarded." (Exhibit C, page 6 of 26);

c. "There was gross overrepresentation of the use of force and negative outcomes from mostly White male officers interacting with Black and Brown community members. We witnessed again and again Black men dying within minutes, sometimes within seconds, of an interaction with police." (Exhibit C, page 6 of 26, emphasis added);

d. "There were exceptionally few videos showing the police trying to de-escalate situations involving People of Color. In many of the videos showing encounters with community members over minor criminal infractions, a strong emphasis on gaining compliance and control quickly led to rapid escalation with often violent and even deadly results." (Exhibit C, page 6-7 of 26, emphasis added);

e. "Many of the videos . . . are so disturbing in gratuitous violence against Black and Brown people that we strongly recommend that they only be used as examples of why community members historically mistrust the police. . . . We fear that repeated exposure to needless violence normalizes such interactions with the public for the cadets and desensitizes them to their own and their communities' humanity." (Exhibit C, page 7 of 26);

f. "There was a clear pattern, both explicit and implicit, of different communities being offered different degrees of understanding and grace by officers. Police interactions with upper-class, White communities were noticeably absent in the videos. White people were often given considerable grace and understanding even when they demonstrated dangerous behavior, while People of Color, in particular Black men, were given little to no grace or understanding even for minor and less

threatening actions. For example, one video of an armed White man showed an officer speaking calmly and reiterating the person's right to carry a firearm. In contrast, in videos where People of Color were armed or even unarmed, police officers treated them as threats and moved towards use of force with great speed. Such patterns echoed and reinforced popular narratives about, and attitudes toward, communities of color as more 'dangerous' in clear distinction to White people." (Exhibit C, page 8 of 26, emphasis added); and

g. "It was a very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats. In one example, we watched a police officer give a White-presenting man seven minutes of grace and conversation despite his suspicious behavior, while in several other videos a Black man was shot within seconds of being approached by an officer. The pattern we witnessed was that White community members in crisis are allowed to be in crisis; whereas Black community members, whether in crisis or not, are perceived with suspicion as threats." (Exhibit C, page 10 of 26.)

42. Each of the above-quoted findings from the Community Report was true.

43. On April 23, 2021, the Kroll Final Report (described above), provided the following findings from its assessments of APD Training Academy training practices:

a. "[S]ome Academy instructors implicitly taught their students to be biased in enforcing the law. . . .[S]ome of the cadets perceived that the bias was inherently a part of Academy culture and that instructors were indoctrinated into that culture." (Exhibit E, page 42 of 113); and

b. "According to the cadets interviewed, while APD 'talked a good game' about being inclusive, in reality, they perpetuated exclusion." (Exhibit E, page 42 of 113.)

44. Each of the above-quoted findings from the Kroll Final Report was true.

45. In 2016, the Center for Policing Equity conducted an assessment of City of Austin policing data for the years 2014 and 2015 and released a research report entitled "The Science of Policing Equity: Measuring Fairness in the Austin Police Department" (herein the "CPE Report"). A copy of the CPE Report as published in October 2016 and revised in May 2017 is attached as Exhibit G and is incorporated herein by reference.

46. The CPE Report found that Austin police officers used more force in the neighborhoods where Black and Hispanic Austinites live as compared to use of force in predominantly White neighborhoods. Even after adjusting for crime and poverty variables, the CPE Report found that Austin police officers' use of force in Black and Hispanic neighborhoods was disproportionate and unjustified. The CPE Report stated:

a. "The raw data point to a disparity of treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty." (Exhibit G, page 2 of 18);

b. "Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA [metropolitan statistical area]." (Exhibit G, page 11 of 18);

c. "Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin's neighborhoods with a higher percentage of black or

Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood *were statistically significant positive predictors of police use of force*." (Exhibit G, page 12 of 18, emphasis added); and

d. "[A]nalyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained**. In other words, community-level explanations of use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks." (Exhibit G, page 15 of 18, emphasis in original.)

47. Each of the above-quoted statements from the CPE Report was true.

48. On December 5, 2019 Austin City Council Resolution 66 (described above) recognized racial biases in APD policing practices and policing outcomes:

a. "[T]he City of Austin acknowledges the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy." (Exhibit F, page 1 of 12); and

b. "[T]he Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to cause severe force in communities where African-American and Latinos live, even after

controlling for factors such as community crime and poverty rates." (Exhibit F, page 1 of 12.)

49. Each of the above-quoted statements from Resolution 66 was true.

50. In November 2020, the Joyce James Report further documented the racial bias and disparities in the APDs use of lethal force and excessive force:

a. "Findings showed that residents in Austin neighborhoods with a higher percentage of African American or Hispanic/Latinx residents, those in poverty, and neighborhoods with higher crime rates, had disproportionate force and severity of force used upon them. When these possibilities other than race were adjusted statistically, African American and Hispanic/Latinx residents still experienced higher rates of use of force." (Exhibit B, page 125 of 152); and

b. "The Austin Police Departments Research and Planning Unit (2017) also produced data on use of force (along with other measures). In this case as well, when the use of force from 2014 to 2016 by race and ethnicity was compared to the population, African Americans and Hispanics/Latinxs had disproportionate force used upon them relative to Whites." (Exhibit B, page 125 of 152.)

51. Each of the above-quoted statements from the Joyce James Report was true.

52. On information and belief, the City of Austin and the APD maintain other policies, practices, and customs that reinforce, encourage, and tolerate the paramilitary training of its police officers, the "warrior mindset," and the "us-versus-them" approach to policing. These policies and practices include, without limitation, investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and complaints involving officer use of force. On information and belief, these additional policies,

practices, and customs reinforce and exacerbate the pervasive APD culture that permits, encourages, and tolerates the use of excessive force by Austin police officers.

53. On information and belief, the City of Austin and the APD maintain other policies, practices and customs that reinforce, encourage, and tolerate the disproportionate use of excessive force against Hispanic and Black citizens and in predominantly Hispanic and Black neighborhoods. These policies and practices include, without limitation, investigative approaches to incidents and complaints involving officer use of force and administrative / disciplinary approaches to incidents and complaints involving officer use of force. On information and belief, these additional policies, practices, and customs reinforce and exacerbate the pervasive APD culture that encourages and tolerates racially disproportionate use of excessive force by Austin police officers.

54. The City of Austin's policies, practices and customs that cause, tolerate, and encourage the use of excessive force by APD officers (both generally and also disproportionately directed at Black and Hispanic persons in Black and Hispanic communities) is demonstrated by APD's long and well-documented pattern and practice of such excessive force that includes at least the following specific examples: (1) the shooting and killing of Daniel Rocha by APD Officer Julie Schroeder on or about June 9, 2005; (2) the shooting and killing of Kevin Brown by APD Sgt. Michael Olsen on or about June 3, 2007; (3) the shooting of Sir Smith by APD Officer Leonardo Quintana on or about May 11, 2009; (4) the use of a TASER and use of force against Carlos Chacon by APD Officers Eric Copeland and Russell Rose on or about April 29, 2011; (5) the shooting and killing of Byron Carter by APD Officer Nathan Wagner on or about May 30, 2011; (6) the shooting and killing of Ahmede Bradley by APD Officer Eric Copeland on or about April 5, 2012; (7) the use of force against Pete Hernandez by APD Officer Jesus Sanchez on or about

June 7, 2012; (8) the shooting and killing of Larry Jackson, Jr. by APD Det. Charles Kleinert on or about July 29, 2013; (9) the shooting of Jawhari Smith by APD Sgt. Greg White in March 2014; (10) the shooting of David Joseph by APD Officer Geoffrey Freeman on or about February 8, 2016; (11) APD Officer James Harvel shooting at Jason Roque on or about May 2, 2017; (12) the shooting of Landon Nobles by APD Officers Richard Egal and Maxwell Johnson on or about May 7, 2017; (13) the use of a TASER and force against Javier Ambler, resulting in his death, by APD Officer Michael Nissen on or about March 28, 2019; and (14) the shooting and killing of Michael Ramos by APD Officer Christopher Taylor on or about April 24, 2020. APD's pattern and practice of excessive force is further confirmed by APD's response to citizen protests during the 2020 Black Lives Matter Demonstrations when APD unleashed a wave of excessive force against peaceful citizens who were merely exercising their First Amendment rights, and many of whom were shot by APD with so-called "less lethal" munitions, resulting in traumatic and serious brain, head, and other serious physical injuries.

55. APD's own internal reports confirm APD's pattern and practice of excessive force. APD's own reports reflect that, from 2006 to 2016, APD used force against 1,159 people who only exhibited "passive" resistance, 838 people who only exhibited "verbal" resistance, and 6,626 people who only exhibited "defensive" resistance. In 2017, APD changed its reporting metrics such that the type of resistance is not available for incidents during that year. From 2018 through 2020, for identified individuals, APD's own reports reflect that APD used force against at least 58 people who had not resisted, against 310 people who only exhibited "passive" resistance, and against 4,148 people who only exhibited "defensive" resistance.

56. APD's own internal reports show that, from 2017 to 2020, APD began using force 58% more often—while making 51% *fewer* arrests. During an independent review authorized by

the City of Austin, 112 uses of force (against 88 individuals) in late 2019 were found to have been inappropriate, despite approval of force by APD supervisors in each incident. The same independent review found that the APD use of force process lacked proper internal supervisory review and investigation and frequently fails to address the appropriateness of the use of force used against members of the public.

B. The City of Austin Adopted a Formal Policy Permitting Off-Duty APD Officers to Take Law Enforcement Actions, Without Adequate Policies, Training, and Oversight to Prevent Off-Duty Officers From Using Excessive Force.

57. For many years prior to the death of Alex Gonzales, Jr. on January 5, 2021, the City of Austin and APD have permitted and encouraged APD officers to take off-duty law enforcement actions against civilians, including arrest, use of force, and even the use of lethal force. APD trained *and encouraged* APD officers to be ready and willing to take off-duty law enforcement actions in a variety of circumstances. APD permitted, trained, *and encouraged* its officers to carry their department-issued duty firearms and/or personal firearms while off-duty in case the officer decided to use the weapon in connection with an off-duty law enforcement action.

58. For many years prior to the death of Alex Gonzales, Jr. on January 5, 2021, the City of Austin and APD adopted formal written policies regarding an APD police officer's off-duty law enforcement action. On information and belief, the applicable written policy in effect on January 5, 2021 was Section 364 (entitled "Off-Duty Law Enforcement Actions") of the APD General Orders issued on November 12, 2020, a copy of which is attached hereto as Exhibit H. This written policy of APD provided for each of the following:

a. Section 364.3(a) of this written policy expressly authorizes APD officers to carry a firearm in a law enforcement capacity while off-duty, as follows: "Any officer wishing to carry a firearm while off-duty is authorized to do so as either a law

enforcement officer as allowed by this order or as a civilian under the authority of the state issued license, not both."

b. Section 364.3(b) of this written policy *requires* the off-duty officer to carry his or her police badge and identification card when the off-duty officer carries a firearm in a law enforcement capacity. It states: "Officers shall carry their Department issued badge and identification card when carrying firearms off-duty under the authority granted to a law enforcement officer."

c. Section 364.2 *expressly encourages* an off-duty officer to take law enforcement actions if the off-duty officer "reasonably believes" that a civilian poses an imminent threat of death, serious injury, or significant property damage. It states: "Officers who becomes [sic] aware of an incident or circumstance that he reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage, should take reasonable action to minimize the threat."

d. Section 364.4.1 of this written policy expressly *permits* an off-duty officer to take law enforcement actions against a civilian (including the use of *lethal force*) in some situations where the off-duty officer has not first displayed a police badge or otherwise identified himself or herself as a police officer. It states: "Officers should clearly identify himself as a police officer to those involved in the situation, *if practicable*." (Emphasis added). By instructing the officer to identify himself only "if practicable" without any guidance on when it is or is not "practicable" to identify as a police officer, the written policy leaves to the unguided discretion to the off-duty officer when the officer may undertake a law enforcement action (including the use of lethal force) without first displaying a police badge or otherwise

identifying as a police officer.

59. In connection with this written policy that permitted and encouraged off-duty police officers to take off-duty law enforcement actions, the City of Austin and APD trained its officers in ways that conflated the contexts of on-duty and off-duty police actions. In particular:

a. Section 364.1 of APD's written policy instructs off-duty officers that "[t]he same standard of objective reasonableness that applies to on-duty enforcement actions shall also apply to off-duty enforcement actions." APD trained its officers on this aspect of its written policy in ways that caused and encouraged its officers to disregard critical distinctions between on-duty and off-duty police conduct, including but not limited to the use of lethal force.

b. APD trained its officers that the "force continuum" or "force ladder" should be equally applied to a situation where an off-duty officer has not displayed a badge or identified as a police officer. This disregards critical distinctions between the on-duty and off-duty law enforcement contexts because the lowest level of the force ladder—at which the mere presence of a uniformed police officer is deemed a show of force that permits a civilian an opportunity to comply—is not present when the police officer is off-duty and out-of-uniform.

c. APD trained its officers to expect a civilian to comply with an off-duty officer's verbal commands even before the off-duty officer has displayed a police badge and/or has otherwise adequately identified himself or herself as a police officer. APD thereby trained its officers to disregard critical distinction between the on-duty and off-duty enforcement contexts, including that non-compliance with an off-duty officer's verbal commands in such circumstances cannot be considered a

"failure to comply" that justifies the off-duty officers' use of additional force measures according to the "force ladder."

d. APD trained its officers to utilize "Action Beats Reaction" principles and tactical training that are not equally applicable in off-duty scenarios, including where the off-duty officer has not displayed a badge or identified as a police officer. APD trained its officers to assess the mere sight of a firearm in close proximity to a civilian as an existential threat to officer safety justifying the off-duty officer's use of lethal force on the civilian in contexts that are not equally applicable in off-duty scenarios, especially before the off-duty officer has shown a badge or identified as a police officer. APD trained its officers in ways that disregard respect for the Second Amendment constitutional rights of civilians who carry firearms, and in particular the rights and reasonable expectations of citizens and civilians who themselves carry firearms, in the absence of an announced and verifiable police presence by the off-duty officer.

e. APD trained its officers to internalize the so-called first rule of policing—that the officer makes sure he or she goes home at the end of a shift—is equally applicable with respect to permissible law enforcement action when the APD officer is off-duty. APD trained its officers that they are entitled to use lethal force in response to "unknown" potential risks of a threat, and they are entitled to preemptively use lethal force in response to small cues—such as a bulge in a person's waistband—that are inappropriate in the context of off-duty law enforcement action, particularly when the off-duty officer has not displayed a badge or identified as a police officer.

60. The City of Austin and APD provided the training and/or lack of training described

above despite knowing that its normal training of on-duty conduct was intended by design to become deeply instilled at an instinctive level for every APD officer. APD's normal "warrior mentality" training, along with APD's policies and training that permitted and encouraged off-duty policing actions, had the effect of overwhelming and drowning out any other aspects of training or policy that might have appropriately distinguished on-duty and off-duty policing scenarios in the minds and according to the instincts of APD's officers. APD's normal "warrior mentality" training, in connection with at least the policies and training outlined above, were intended to cause and did cause off-duty officers to interpret any ambiguities in and exercise any discretion granted by APD's formal policies to permit and require escalated force, including lethal force, by off-duty officers.

C. Officer Gutierrez Used Excessive Force When He Shot and Mortally Wounded Alex Gonzales, Jr. Without Provocation or Justification.

61. In the early morning hours of January 5, 2021, minutes past midnight, Alex Gonzales, Jr. ("Alex") was driving his family home for the night. In the vehicle with Alex was his long-time girlfriend and partner Jessica Arellano ("Jessica"), who sat in the front passenger seat. In the back seat of Alex's car was Alex and Jessica's two-month-old infant, Z.A.G., who was safely secured and sleeping in a child restraining seat located in the back seat of the car, on the right-hand side just inches behind his mother Jessica in the front passenger seat. Alex and Jessica were on their way home to tuck in baby Z.A.G. to sleep for the night.

62. As Alex and his family drove on or near Oltorf Avenue in Austin, Texas, Alex first encountered Gabriel Gutierrez ("Gutierrez") as Gutierrez was driving in the same direction as Alex's car.

63. Gutierrez was (and remains) a licensed peace officer in the State of Texas and a patrol officer for the Austin Police Department. At the time Gutierrez first encountered Alex's car

on the roadway that night, Gutierrez was off duty. Gutierrez was dressed in civilian workout clothes following a late-night workout at his personal gym. Gutierrez was driving his personal, unmarked car.

64. On information and belief, Gutierrez was returning home to his apartment following a workout at his gym when he first encountered Alex's car on the road. On information and belief, Gutierrez was driving in a reckless and dangerous manner when he first encountered Alex's car. On information and belief, Gutierrez was responsible for creating and causing what Gutierrez would later describe to the 911 operator as a "road rage" encounter with Alex. On information and belief, Gutierrez drove his vehicle to make a sudden and unexpected turn in front of Alex's car ("cutting off" Alex's car) as Gutierrez sped home from the gym. On information and belief, Gutierrez's aggressive and reckless driving as he encountered Alex's vehicle presented a real and substantial risk of causing a collision between the vehicles. On information and belief, Gutierrez's driving in his encounter with Alex's car posed a real and substantial danger to the physical safety of each passenger in Alex's car (including baby Z.A.G.), including risks of severe physical injury or even death to the passengers of Alex's car.

65. After Gutierrez cut off Alex's car, Gutierrez subsequently turned from E. Oltorf Street and headed southwest on Wickersham Lane. Alex followed behind Gutierrez, also turning from E. Oltorf Street onto Wickersham Lane.

66. Gutierrez's apartment was located on Wickersham Lane, with the apartment complex entrance located on the left side of the road to both Gutierrez and Alex as they each drove southwest on Wickersham. Gutierrez slowed his car as he approached the turn-in for his apartment complex on the left. But rather than attempting to turn left into his apartment complex, Gutierrez slowly pulled his car to the right-side curb and stopped his vehicle.

67. Gutierrez's driving actions were intended to invite or encourage Alex to pull up his car alongside Gutierrez's car. Gutierrez's driving actions signaled to Alex that Gutierrez was inviting a "road rage" confrontation between the drivers. Because of Gutierrez's own aggressive driving and provocation toward Alex's car, Gutierrez knew at that moment that Alex was likely to be angry when he pulled up next to Gutierrez, and would be likely to use aggressive words or actions in such a "road rage" confrontation. On information and belief, Gutierrez already had his firearm drawn and he was already contemplating scenarios in which he might use lethal force against the approaching driver even before Alex pulled his car up next to Gutierrez.

68. As Gutierrez pulled to the right and stopped, Alex pulled his vehicle forward until it was alongside the left of Gutierrez's vehicle, where Alex stopped his vehicle.

69. Alex did not use his vehicle to "cut off" Gutierrez from making a left hand turn into the apartment complex. Gutierrez did not attempt to turn into the apartment complex at that time. Gutierrez slowed and pulled to the right, allowing Alex to pull up next to him on Gutierrez's left. At no time did Alex's driving present a risk of causing a collision with Gutierrez. At no time was Gutierrez required to alter his own driving in order to avert a collision with Alex's vehicle.

70. Jessica sat upright and was fully visible in the front passenger seat of Alex's car. When Alex stopped his car next to Gutierrez, Jessica was positioned in between the two men, Alex and Gutierrez. Jessica was sitting, clearly visible, no more than a few feet or less from Gutierrez as he sat in the driver's seat of his own car. Baby Z.A.G. was in the back, mere feet or inches behind Jessica.

71. Alex pulled up next to Gutierrez's car with the intention of confronting Gutierrez about his aggressive driving. Alex intended to inform Gutierrez that there was a baby in the back seat of the car. Alex intended to have an important "man-to-man" with this unknown civilian, this

crazy aggressive road rage driver who almost crashed into a family with a baby in the back seat.

72. Gutierrez did not show his police badge or in any other way identify himself as a police officer before he made his decision to use lethal force. Gutierrez was wearing civilian clothes and driving an unmarked car at that moment. Alex and Jessica did not know (and had no reason to know) that Gutierrez was an APD patrol officer. Gutierrez did not issue any verbal commands for compliance directed at either Alex or Jessica before his decision to use lethal force. Gutierrez did not announce or attempt any arrest or detention before his decision to use lethal force.

73. Less than three seconds after Alex pulled his car up next to Gutierrez's car, a barrage of gunfire erupted from Gutierrez's car, directing lethal force at Alex and Jessica through the car windows. Gutierrez fires his weapon at least six times. At least one bullet fired by Gutierrez hit Alex in the head, and at least three bullets fired by Gutierrez hit Jessica in the arm, back and chest. Immediately, both Alex and Jessica were severely wounded and began bleeding profusely.

74. Even though Gutierrez was off-duty at the time, Gutierrez's use of lethal force directed at Alex was undertaken as a law enforcement action by Gutierrez on Alex.

75. No gunfire or lethal force was ever directed at Gutierrez. Alex never fired a weapon at Gutierrez or anyone else. Jessica never fired a weapon at Gutierrez or anyone else. Even after Gutierrez began firing multiple bullets at Alex and Jessica, there was no return gunfire directed at Gutierrez.

76. Alex did not pull up to Gutierrez's car with a gun pointed at Gutierrez. Gutierrez's statements to the contrary are false.

77. On information and belief, Alex did not point a gun directly at Gutierrez at any time. On information and belief, Alex did not brandish a gun in a threatening manner toward

Gutierrez at any time. On information and belief, Alex did nothing whatsoever toward Gutierrez that would have caused Gutierrez to form a reasonable belief that Alex posed any risk of inflicting immediate physical harm to Gutierrez or anyone else. On information and belief, after Gutierrez started firing his weapon Alex attempted to retrieve a handgun from underneath his seat, but Alex was unable to retrieve his firearm in time to defend himself because Gutierrez opened fire so quickly, and because Gutierrez so quickly and immediately shot Alex in the head.

78. On information and belief, Alex's attempts to retrieve his firearm to defend himself after Gutierrez started shooting were legally valid acts of self-defense and/or defense of others.

79. Gutierrez was off-duty at the time he shot Alex and Jessica. Gutierrez did not witness or observe anything, or have any other information, that would justify his decision to take law enforcement actions with respect to Alex or Jessica while Gutierrez was off-duty. Gutierrez did not witness a completed crime or a crime in progress. Gutierrez had no reason to believe that Alex or Jessica posed any immediate risk of physical danger or harm to Gutierrez or anyone else. No reasonable off-duty officer at the time, given the totality of facts and circumstances, would have made the decision that Gutierrez made to take law enforcement actions against Alex and Jessica by directing lethal force at them.

80. Gutierrez decided to use lethal force in disregard of the safety of bystanders Jessica and baby Z.A.G. In particular, Jessica sat upright and clearly visible in the front passenger seat. Gutierrez, a patrol officer highly trained in situational awareness and tactical use of firearms in lethal force situations, shot her three times at close range. No reasonable officer under the circumstances would have made the same decision as Gutierrez to use lethal force, given the substantial risk of severe physical injury or death to Jessica, who was directly in Gutierrez's line of fire at close range.

81. On information and belief, at the time of the shooting Gutierrez was in a physical and/or mental condition where he lacked the ability to accurately perceive and/or mentally process the events as they actually occurred that evening. On information and belief, Gutierrez caused himself to be in such a physical and/or mental condition by ingesting or consuming substances or compounds that altered his natural physical and/or mental conditions and abilities.

82. Gutierrez had reasonable alternatives available to him other than the use of lethal force. For example, Gutierrez could have simply pulled his car forward and immediately ended the face-to-face confrontation. Gutierrez also could have pursued other methods of deescalating the situation, such as identifying himself as a police officer and issuing verbal commands to Alex and Jessica. But Gutierrez instead chose to immediately use lethal force, with no efforts to deescalate or use alternatives to lethal force. Gutierrez's failure to pursue de-escalation or alternatives to lethal force was unreasonable. No reasonable officer under the circumstances would have chosen to use lethal force directed at Alex and Jessica given the available alternatives to the use of lethal force.

D. Gutierrez Calls 911 and Makes Materially False Statements to the 911 Operator.

83. In an instant that night, Alex had gone from driving along a city street with his girlfriend and baby to having the macabre experience of a stranger shooting repeatedly into his car with a semi-automatic handgun. As the events unfolded, Alex knew only that he had been shot in the head and that Jessica had been shot multiple times. At the moment Gutierrez ended his barrage of gunfire, Alex did not know whether his infant son Z.A.G. in the back seat had been shot, injured, or perhaps even killed.

84. Almost immediately after Gutierrez stopped shooting, Alex's vehicle rolled slowly forward and up onto the right-hand curb, until it stopped a short distance ahead of Gutierrez's

vehicle. Alex's car stopped when it ran into the curb. Jessica opened the passenger-side door and almost immediately fell to the ground, continuing to bleed profusely from the gunshot wounds inflicted by Gutierrez.

85. Gutierrez's car followed Alex's car a short distance and then stopped several feet behind Alex's car. Gutierrez then exited his own vehicle with his gun drawn and pointed in the direction of Alex's car, with Alex and baby Z.A.G. still inside the car and Jessica laying injured and bleeding on the ground beside Alex's car. Gutierrez would keep his gun pointed at Alex and in the direction of Alex's car for at least the next several minutes.

86. At approximately 12:33 AM, after having fired at least six shots into Alex's vehicle and hitting both Alex and Jessica, Gutierrez called 911.

87. Gutierrez began his call to 911 by identifying himself to the 911 operator as an off-duty APD officer. Gutierrez then stated "I have shots fired. 2400 Wickersham Lane."

88. When the 911 operator next asked Gutierrez how many shots he had heard, Gutierrez responded by informing the 911 operator that a "victim" had been shot. Gutierrez stated: "I have a— a victim—the driver—the, uh, other vehicle, he has a gun. I'm not—I'm not shot. I need EMS over here."

89. Seconds later, Gutierrez can be heard shouting at Alex "Hey, drop your gun. Austin Police." Gutierrez then states to the 911 operator: "He's got a gun in his hand." Gutierrez's statement was false when it was made. At the time Gutierrez made this statement to the 911 operator, Alex did not have a gun in his hand.

90. Seconds later, Gutierrez again states to the 911 operator: "I'm APD, I—he's got a gun in his hand." Again, Gutierrez's statement was false when it was made. At the time Gutierrez made this statement to the 911 operator, Alex did not have a gun in his hand.

91. Seconds later, Gutierrez can be heard yelling at Alex: "Put your gun down, man. Let me see your hands. Hands up, man." Again, this statement was false because at the time Alex did not have a gun in his hand.

92. Gutierrez next stated to the 911 operator: "He's hanging out the door. He *had* a gun in his hand." (Emphasis added) Gutierrez next stated to 911 dispatch: "There's a passenger. She's lying on the ground—female passenger."

93. The 911 operator then asked: "Okay, so tell me exactly what happened." Gutierrez responded by stating: "Um, it was a road rage incident. I was driving and he cut me off, and he pointed a gun at me." Gutierrez's account of the events to the 911 operator was false. Alex had not used his vehicle to "cut off" Gutierrez; and Alex had not pointed a gun at Gutierrez.

94. The 911 operator next asked if anyone was injured, and Gutierrez responded by saying "Yes, the—the driver of the other vehicle. He's shot." Later in the call, Gutierrez would tell the 911 operator that he was unsure whether the female on the ground (Jessica) had been shot or injured. During the entirety of the 911 call, Gutierrez failed to inform the 911 operator that the female on the ground had been shot, even though he personally had shot Jessica three times at close range just moments before.

95. Gutierrez can next be heard yelling at Alex: "Put your gun down. Austin police, put your gun down. Don't make me shoot you again, man." Again, this statement was false because Alex did not have a gun in his hand at the time. Moments later, Gutierrez told the 911 operator: "The driver, he's standing. He's got blood all over his face. He's standing. *I don't know if he's still got the gun in his hand or not*." (Emphasis added).

96. Near the very end of the 911 call, Gutierrez can be heard yelling at Alex: "All right, put your gun down, man. It's the police." Again, this statement was false when made because Alex

did not have a gun in his hand at the time.

97. During the 911 call, Gutierrez informed the 911 operator that the female on the ground was saying "My baby! My baby! My baby!" When the 911 operator asked "Is there a baby involved or is she pregnant? Do we not know?" Gutierrez responded by saying: "I have no idea, I don't know—I have no idea. She's just saying, 'My baby.'"

98. During the 911 call, Alex was severely wounded and bleeding profusely because he had been shot in the head at close range by Gutierrez. The gunshot wound to Alex's head severely compromised Alex's physical and mental functions, and his comprehension. Alex's physical movements were slow and lumbering. After being shot in the head, Alex was physically incapable of making quick, sudden, or unexpected physical movements. Because of Alex's bleeding and lumbering movements, his severe physical injuries and need for immediate medical attention were clearly apparent to any reasonable person and to any reasonable trained law enforcement officer.

99. During the time Gutierrez was on the phone with the 911 operator, Alex opened his car door and slowly exited the vehicle. Because of his severe injuries and physical limitations from being shot, Alex struggled to open his car door, but eventually he managed to open his car door and slowly exit his vehicle. Alex then stood nearly motionless beside his driver-side car door for several minutes. Alex remained in this spot next to the driver-side car door, without making any sudden or unexpected movements, and struggling to remain standing, for the duration of Gutierrez's 911 call and until on-duty police officers arrived at the scene. During this time before on-duty officers arrived, as Alex stood outside his car, Alex never held a gun in his hand.

100. Gutierrez finally, for the first time, identified himself as a police officer by yelling at Alex and Jessica while Gutierrez was on the call with the 911 operator. Gutierrez also began

issuing verbal commands for compliance directed at both Alex and Jessica. On information and belief, Alex's hearing and audio perception were severely impaired at the time because Gutierrez had shot him in the head. On information and belief, Alex was unable to hear or understand Gutierrez's verbal identification as a police officer and Gutierrez's verbal commands because Alex's hearing and audio perception were impaired from having been shot in the head.

101. During the entirety of Gutierrez's 911 call and before on-duty police officers arrived at the scene, Gutierrez made no attempt to render medical aid or provide any emergency physical care to either Alex or Jessica. Gutierrez declined to render aid even though he knew that he had just shot both Alex and Jessica at close range, causing them each to have severe and life-threatening physical injuries.

102. As Gutierrez spoke to the 911 operator, on multiple occasions he turned his back to Alex and Jessica because he did not perceive either of them as presenting a threat to his physical safety. During the entirety of Gutierrez's 911 call and before on-duty police officers arrived at the scene, however, Gutierrez made no attempt to arrest or detain Alex or Jessica. Gutierrez likewise declined to inform any other person that Alex and Jessica no longer (or never did) present a threat to the physical safety of himself, any other person present, or any officer likely to arrive at the scene.

E. Officer Serrato Used Excessive Force When He Shot and Killed Alex Gonzales, Jr. Without Provocation or Justification.

103. At approximately 12:37 a.m., on-duty APD Officer Luis Serrato ("Serrato") and his partner APD Officer Brian Nenno ("Nenno") responded to Gutierrez's 911 call and arrived at the scene.

104. Prior to their arrival at the scene, both Serrato and Nenno had been apprised by 911 dispatch that a person claiming to be an off-duty APD officer had shot the driver of another vehicle.

However, upon arriving at the scene neither Serrato nor Nenno took any steps to verify that Gutierrez was in fact an APD police officer. On information and belief, neither Serrato nor Nenno recognized Gutierrez as an APD officer from past interactions with him.

105. Prior to their arrival at the scene, both Serrato and Nenno had reason to know of the possible presence of a baby at the scene. The 911 dispatch call notes from the event were available to both Serrato and Nenno before they arrived at the scene, and those call notes contained an entry prior to their arrival at the scene that stated: "fem is saying my baby my baby…unkn preg or child". However, neither Serrato nor Nenno took steps to determine if a baby was present at the scene after they arrived.

106. When Serrato and Nenno arrived at the scene, Alex remained standing outside his driver-side door and Jessica remained laying on the ground just outside the passenger door of Alex's vehicle. Serrato and Nenno immediately lined up in formation with Gutierrez, positioned behind Gutierrez's unmarked personal vehicle for cover.

107. Serrato and Nenno immediately joined Gutierrez in aiming their firearms at Alex as he struggled to maintain his balance outside the driver-door of his own vehicle. Serrato and Nenno each pointed his firearm at Alex even though they had not seen Alex holding a gun, had not been told that Alex was in possession of a gun, had no reason to think that Alex had fired a weapon, and had no reason to think that Alex posed a threat of harm to anyone at that time.

108. Only *after* Serrato and Nenno had each pointed their respective gun at Alex did Gutierrez then state to Serrato and Nenno that Alex had pointed a gun at him (Gutierrez). Again, Gutierrez's statement was false when it was made because Alex had not pointed a gun at Gutierrez. Gutierrez also stated to Serrato and Nenno at that time that there was a gun in the driver's side of Alex's car.

109. Almost immediately after arriving at the scene, Serrato and Nenno each knew that Gutierrez had shot both Alex and Jessica. Serrato and Nenno each could easily observe that both Alex and Jessica had suffered severe and life-threatening gunshot wounds. Yest, neither Serrato nor Nenno attempted to render medical aid or assistance to Alex or Jessica upon arriving at the scene.

110. Officer Nenno indicated to Gutierrez that Gutierrez should stand back from the officer's defensive position behind Gutierrez's car, and Gutierrez did so. Nenno and Serrato maintained their defensive position behind Gutierrez's car and continued to point their guns at Alex, who was still standing at the driver's door of his own car. Alex had his hands in plain sight and the officers could plainly see that Alex was not holding a weapon.

111. Nenno and Serrato began shouting multiple, conflicting commands at Alex such as walk, turn around, stop, and keep walking in both English and Spanish.

112. On information and belief, Alex continued to suffer from impaired hearing and impaired auditory processing that prevented him from hearing and understanding the commands that Serrato and Nenno shouted at him. An experienced and trained law enforcement officer in the position of Serrato and Nenno at that time knew or reasonably should have known that there was a high probability that Alex could not hear or understand their verbal commands at the time because he had been shot in the head and was severely injured and bleeding.

113. Alex began to walk slowly and stumble toward the rear of his car and then around to the passenger side of the car. At all times, Alex's movements remained slow and lumbering. He never made any sudden or unexpected movements. Alex's hands remained visible at all times. Serrato and Nenno could both see that Alex had no weapon in his hands.

114. When Alex reached the passenger side of his car, he glanced down to see his

girlfriend Jessica laying on the ground bleeding.

115. While Alex was struggling and staggering to reach the passenger side of the car to check on the welfare of Jessica and Z.A.G., Serrato unnecessarily and without reason abandoned his position of cover behind Gutierrez's vehicle and walked several steps to his right—into the open and away from any cover. Serrato stood completely upright, presenting his full body as a target for potential gunfire.

116. No reasonable officer in Serrato's position would have left cover to expose himself in the open if he believed Alex or his wounded passenger (Jessica) posed an imminent threat of harm to him in those circumstances. During this sequence of events, Nenno maintained his position of cover behind Gutierrez's vehicle at all times.

117. Serrato moved into the open to have a clear line of fire at Alex, as Alex stood next to the rear car door just inches from baby Z.A.G. Serrato kept his gun trained on Alex at all times. On information and belief, Serrato had already decided at the time he abandoned his position of cover that he would use lethal force on Alex if Alex made any small movement with his hand toward the inside of the car.

118. Serrato continued to observe that Alex's hands were empty, and that Alex did not possess or have access to a weapon.

119. Serrato yelled at Alex several times "Don't reach! Don't reach!" On information and belief, Serrato had already determined that he was going to use lethal force on Alex if Alex made any slight reaching move into the car.

120. Not knowing whether his baby Z.A.G. had been shot, Alex slowly opened the rear passenger door to check on his infant son. As Alex bent down to look into the rear passenger door to check on baby Z.A.G., Alex kept his right hand visible and touching the open car door. Alex

gently leaned below the roof line of the vehicle to look inside the car. Alex slowly made a small movement with his left hand toward the interior of the car where Z.A.G. was still secured in a child restraining seat. Alex continued to move slowly, and he made no sudden movements at all.

121. As soon as Alex made even the slightest movement of his left hand into the vehicle, Serrato began rapidly firing his weapon at Alex. In that moment, Alex did not even begin to make any movement to withdraw his hand from the vehicle. Alex did nothing to indicate to Serrato that he presented a threat of harm to anyone in that moment. Serrato did not see Alex in possession of a weapon, and Serrato had no reason to believe that Alex might be able to access a gun or weapon in the right rear seat of Alex's car.

122. Serrato fired at least ten shots at Alex, hitting him multiple times.

123. Serrato's barrage of gunfire further inflicted immediate and serious physical injuries on Alex. Alex slumped to the ground lifeless and dying, just inches away from his infant son Z.A.G. Alex would later die on-scene as a result of his multiple gunshot wounds.

124. Serrato used lethal force on Alex without provocation or justification. At no time did Serrato observe Alex do anything to give Serrato a reasonable belief that Alex posed a risk of immediate physical danger to Serrato or anyone else. Serrato had no other reason or information to believe that Alex posed an immediate risk of physical danger to Serrato or anyone. Serrato knew that Alex himself had already been shot in the head. Serrato observed Alex making slow and lumbering movements at all times, and never making a surprise movement. No reasonable officer would have chosen to use lethal force on Alex given the lack of an immediate threat to anyone's safety.

125. No reasonable officer in Serrato's position that night would have increased his own risk of danger and/or escalated the situation by abandoning a position of cover in the way that

Serrato did. Serrato himself was responsible for creating any risk of danger or perceived risk of danger that Serrato claims to have faced in the moment he chose to use lethal force.

126. Serrato showed no concern for the safety of bystanders when he decided to use lethal force. Serrato knew that Jessica, laying on the ground and severely bleeding from gunshot wounds, was in his line of fire and was at risk of Serrato shooting her if Serrato decided to fire at Alex. Serrato also knew or should have known that a baby may be present at the scene and was at risk of being shot if Serrato chose to use lethal force. No reasonable officer in Serrato's position at the time would have chosen to use lethal force directed at Alex, given the substantial risk of serious physical injury to bystanders.

127. Serrato had reasonable alternatives available to him other than the use of lethal force. For example, Serrato could have maintained his position of cover and waited for additional law enforcement officers to arrive on scene. Serrato could have continued to observe Alex's actions and could have waited to see if Alex ever did anything to indicate that Alex presented a risk of physical injury to anyone. If Serrato had simply kept his cool and waited, he would have seen Alex check on Z.A.G. and would have realized that there was a baby in the car. Serrato could have pursued other methods of de-escalation. No reasonable officer under the circumstances would have chosen to use lethal force on Alex as Serrato did in that moment, given the available alternatives to the use of lethal force.

F. The City of Austin Ratified the Actions and Conduct of Officer Gutierrez and Officer Serrato By Purposefully Conducting an Inadequate Investigation Into the Shooting Death of Alex Gonzales, Jr. and By Failing to Terminate or Discipline Either Officer.

128. The City of Austin and APD began conducting an investigation of the death of Alex Gonzales, Jr. and the shooting of Jessica Arellano almost immediately after the events. As an integral part of its investigation, APD investigated the actions and behavior of both Officer

Gutierrez and Officer Serrato in connection with these events. APD's investigation of Gutierrez and Serrato was handles by APD's Special Investigation Unit ("SIU") and APD's Internal Affairs ("IA") division.

129. From the outset, APD's investigation of Gutierrez's and Serrato's actions did not proceed according to normal police procedures that would be used to investigate similar actions or conduct undertaken by a civilian. APD's investigation, from the beginning, focused on efforts to identify potential justifications and excuses for each officer's actions. APD's investigation was not undertaken with objectivity, and APD's investigation was not primarily motivated by efforts to determine the true facts of the encounter. Instead, APD's investigation used techniques and methods that were aimed at clearing the officers of wrongdoing by identifying potential excuses or justification for their conduct.

130. APD's investigation of Gutierrez and Serrato failed to take normal investigative steps that an objective investigation would have taken. APD's investigation purposefully failed to pursue facts and purposefully failed to gather information that might have led to a conclusion that either Officer Gutierrez or Officer Serrato had violated a policy or made a mistake.

131. In December 2022, potential criminal charges for Officer Gutierrez and / or Officer Serrato related to the killing of Alex Gonzales, Jr. and the shooting of Jessica Arellano were presented to a Travis County Grand Jury. On or about December 27, 2022, the grand jury returned a no-bill with no indictment of criminal charges against either officer. On information and belief, members of APD's SIU investigative team assisted the Travis County District Attorney with presentation of the case against Officers Gutierrez and Serrato to the Travis County grand jury. On information and belief, neither the Travis County district attorney who presented the case to the grand jury nor the APD SIU investigator who assisted did so with the intention of securing an

indictment of either officer. On information and belief, both the Travis County district attorney who presented the case and also the SIU investigators who assisted presented the case to the grand jury with the hope and expectation of *not* securing an indictment so they could wash their hands of the incident and clear the officers in the eyes of the public by white-washing the case through the grand jury.

132. On January 23, 2023, APD's Internal Affairs investigators provided a private case briefing to both the Austin Community Police Review Commission ("CPRC") and the Austin Office of Police Oversight ("OPO"). After the briefing and an opportunity to review APD's full case file, both oversight bodies provided a recommendation. The seven members of the CPRC unanimously recommended an indefinite suspension of Officer Gutierrez, and the CPRC recommended indefinite suspension of Officer Serrato by a 6-1 majority vote. The OPO similarly recommended indefinite suspension for Officer Gutierrez; and it recommended counseling and guidance for Officer Serrato. The OPO report further recommended review and changes to certain APD policies and training, specifically related to "shoot until the threat has ended" and "off-duty law enforcement actions," among others.

133. APD, however, completely ignored the findings and recommendations of the CPRC and OPO. Instead, APD found that neither officer had violated department policy and that neither of them had done anything wrong. APD released an official statement on or about January 26, 2023 that stated the following:

a. "The Austin Police Department's (APD) Internal Affairs Division, with oversight from the Office of the Oversight (OPO), has completed the administrative investigation related to the Officer-Involved Shooting that occurred on January 5, 2021, involving Officers Gabriel Gutierrez and Luis Serrato. The involved officers'

respective chains of command, including Chief Joseph Chacon, have reviewed the thorough investigation, including the available evidence. Additionally, both the OPO and the Community Police Review Commission (CPRC) reviewed the incident and provided a recommendation to Chief Chacon before he made any disciplinary decisions."

b. "Chief Chacon has determined that Officer Gutierrez and Officer Serrato will not face discipline due to this incident. Both will resume their full-time roles as police officers with the Austin Police Department. . . . The officers involved ***acted according to their training and APD policy***." (Emphasis added.)

134. On information and belief, on or about January 26, 2023 both Officer Gutierrez and Officer Serrato returned to active street patrol duty as Austin police officers. On information and belief, both of them continue to patrol the streets of Austin as APD officers to the present day.

IV. CAUSES OF ACTION UNDER 42 U.S.C. § 1983

A. Claim No. 1: The City of Austin is Liable for Officer Gabriel Gutierrez's Use of Excessive Force Against Alex Gonzales, Jr.

135. Plaintiffs assert this cause of action against the City of Austin pursuant to 42 U.S.C. § 1983 and *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978). Each Plaintiff asserts his or her own individual cause of action under § 1983 as a wrongful death beneficiary of Alex Gonzales, Jr. under Texas law pursuant to Tex. Civ. Pr. & Rem. Code § 71.004(b). Each Plaintiff also asserts Z.A.G.'s cause of action under § 1983 as a wrongful death beneficiary and as "Next Friend" of Z.A.G. under Tex. Civ. Pr. & Rem. Code § 71.004(b). Plaintiffs incorporate by reference all allegations asserted in Sections I – III, supra.

136. The City of Austin employed Officer Gabriel Gutierrez as an APD police officer at the time he shot Alex Gonzales, Jr. ("Alex"). Gutierrez acted under color of law when he shot Alex

and took other law enforcement actions with respect to Alex on January 5, 2021.

137. Even though Gutierrez was "off-duty" at the time he initially encountered Alex, all of his relevant interactions with Alex (including shooting Alex) were undertaken under color of law. The APD General Orders in effect on January 5, 2021[3] expressly permitted off-duty officers to take law enforcement actions while off-duty.[4] The APD General Orders at the time also expressly authorized any off-duty officers to carry a firearm while off-duty as "a law enforcement officer as authorized by this order . . . ."[5] The APD General Orders at the time required that, when an off-duty officer decides to intervene and take a law enforcement action, the officer "should clearly identify himself as a police officer to those involved in the situation, if practicable."[6] Under the authority granted to him by the APD General Orders as an off-duty officer, Gutierrez made a decision to intervene with respect to Alex and the other passengers in Alex's vehicle, and Gutierrez undertook law enforcement actions with respect to Alex, including but not limited to using lethal force and shooting Alex. After he shot Alex, Gutierrez can be heard on the 911 call recording shouting at Alex in an attempt to identify himself as an Austin police officer. Gutierrez also can be heard on the 911 call recording continuing to take law enforcement actions with respect to Alex by shouting verbal commands for compliance.

138. Gutierrez shot Alex without provocation or justification. No reasonable police officer would have made the same decision to use lethal force that Gutierrez made, given the totality of the circumstances—including but not limited to the fact that Gutierrez was off-duty, Gutierrez's current physical and mental condition, the fact that Gutierrez was responsible for

[3] On information and belief, the APD General Orders in effect on January 5, 2021 were the APD General Orders issued on November 12, 2020.
[4] *See generally*, Austin Police Department General Orders Issued November 12, 2020 at §364.
[5] *See id.* at §364.3(a).
[6] *See id.* at §364.4.1(b).

creating and escalating the "road rage" encounter with Alex and Jessica, the fact that neither Alex nor Jessica presented a threat of physical harm to Gutierrez or anyone, the fact that Gutierrez had not witnessed the commission of a crime or a crime-in-progress, the fact that the use of lethal force presented a substantial risk of physical harm or death to innocent bystanders, the fact that Gutierrez had not identified himself as a police officer, the fact that Gutierrez had reasonable alternatives to the use of lethal force available to him, and the fact that Gutierrez had reasonable de-escalation techniques available to him.

139. Gutierrez's use of lethal force against Alex Gonzales, Jr. on January 5, 2021 amounted to excessive force in violation of Alex's rights under the Fourth and Fourteenth Amendments to the United States Constitution. The amount and degree of force used by Gutierrez was unnecessary and clearly excessive to any law enforcement objective or other need at the time.

140. Gutierrez's use of unconstitutional excessive force against Alex Gonzales, Jr. was a direct and proximate cause of substantial injuries to Alex Gonzales, Jr., including Alex's death. Plaintiff Alex Gonzales, Sr., Plaintiff Elizabeth Herrera, and minor child Z.A.G. each have suffered compensable damages, as described in more detail below, as a result of the wrongful death of Alex Gonzales, Jr. caused by the wrongful actions and excessive force of Gutierrez.

141. The City of Austin is liable for damages caused by Officer Gutierrez's use of excessive force against Alex Gonzales, Jr. The City of Austin's official policies, practices and customs were a direct and proximate cause of Officer Gutierrez's use of excessive force. The City of Austin's official policies, practices and customs were the motivating force behind Officer Gutierrez's use of excessive force against Alex Gonzales, Jr.

142. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known that APD's paramilitary training techniques, promotion of a warrior

mentality, and paramilitary culture had the effect of tolerating and promoting the use of excessive force by APD police officers. The City of Austin and APD policy makers had long known that each of the individual elements of APD's warrior mindset training and culture alleged above, alone and in combination, had the effect of causing and encouraging widespread use of excessive force by APD officers. Despite full knowledge, for many years, that APD's police training and police culture fostered a culture of violence and excessive force against civilians, the City of Austin and APD acted with deliberate indifference to these constitutional violations and continued to promulgate, implement, and enforce these training practices, official policies, and its warrior-mindset policing culture.

143. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known (and even intended) that APD's paramilitary training techniques caused a warrior mentality to become deeply and instinctively ingrained in each APD officers such that each officer would continue to view the world through the lens of the warrior mindset at all times, while on-duty or off-duty. Officer Gutierrez had undergone extensive police officer training with APD utilizing the paramilitary training techniques and had been subject to and a part of APD policing culture such that the warrior mentality characteristics described above had been deeply instilled within him at an instinctive level.

144. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known that proper policies and training are required to ensure that off-duty police officers recognize the different context and requirements between on-duty and off-duty police conduct. APD had long known that proper policies and training are required to minimize instances of excessive force by off-duty officers who take off-duty law enforcement actions. APD had long known that a policy allowing an off-duty officer to use lethal force prior to identifying as

a police officer was prone to causing instances of excessive lethal force. Despite the knowledge of these things, the City of Austin and APD acted with deliberate indifference to constitutional violations by continuing to promulgate, implement, and enforce an inadequate policy with respect to off-duty law enforcement actions, and by providing inadequate, dangerous, and counterproductive training to its officers regarding off-duty law enforcement actions.

145. On information and belief, Gutierrez believed that his actions with respect to Alex Gonzales, Jr. on January 5, 2021 (including but not limited to shooting Alex) would meet with the approval of supervisors and other Austin investigators of the events because he believed that his actions complied with the City of Austin's and APD's official policies, practices, and customs.

146. The City of Austin ratified the actions of Gutierrez and his use of excessive force against Alex Gonzales, Jr. by: (1) conducting a biased and improper investigation of Gutierrez's actions with the intent of clearing him from wrongdoing rather than pursuing the true facts; (2) finding that his actions did not violate APD policies, procedures, or customs; (3) returning him to patrol duty without suspending him or providing other appropriate discipline, without retraining him, and without any other negative employment consequences; and (4) continuing to promulgate, implement, and enforce the inadequate and dangerous policies, practices, and customs of APD in light of Gutierrez's actions on January 5, 2021.

B. Claim No. 2: The City of Austin is Liable for Officer Luis Serrato's Use of Excessive Force Against Alex Gonzales, Jr.

147. Plaintiffs assert this cause of action against the City of Austin pursuant to 42 U.S.C. § 1983 and *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978). Each Plaintiff asserts his or her own individual cause of action under § 1983 as a wrongful death beneficiary of Alex Gonzales, Jr. under Texas law pursuant to Tex. Civ. Pr. & Rem. Code § 71.004(b). Each Plaintiff also asserts Z.A.G.'s cause of action under § 1983 as a wrongful death

beneficiary and as "Next Friend" of Z.A.G. under Tex. Civ. Pr. & Rem. Code § 71.004(b). Plaintiffs incorporate by reference all allegations asserted in Sections I – III, supra.

148. Serrato was an on-duty Austin police officer at the time he responded to the scene of Alex's shooting after Gutierrez called 911. Serrato's actions with respect to Alex (including shooting Alex) were undertaken under color of law.

149. Serrato fatally shot Alex without provocation or justification. No reasonable police officer would have made the same decision to use lethal force directed at Alex that Serrato made, given the totality of the circumstances—including but not limited to the fact that Alex was not in possession of a weapon and did not have immediate access to a weapon, the fact that Alex never did anything to indicate he posed a risk of physical harm to anyone, the fact that Alex had been visibly shot in the head, the fact that Alex was likely to be suffering from impaired hearing and/or audio processing, the fact that Alex could be seen making only slow and lumbering movements without any sudden or unexpected movements, the fact that the use of lethal force presented the risk of serious physical injury or death to bystanders, the fact that Serrato had increased his own risk of danger and escalated the situation by unreasonably abandoning his position of cover, and the fact that Serrato had reasonable de-escalation techniques and reasonable alternatives to the use of lethal force available to him.

150. Serrato's use of lethal force against Alex Gonzales, Jr. on January 5, 2021 amounted to excessive force in violation of Alex's rights under the Fourth and Fourteenth Amendments to the United States Constitution. The amount and degree of force used by Serrato was unnecessary and clearly excessive to any law enforcement objective or other need at the time.

151. Serrato's use of unconstitutional excessive force against Alex Gonzales, Jr. was a direct and proximate cause of substantial injuries to Alex Gonzales, Jr., including Alex's death.

Plaintiff Alex Gonzales, Sr., Plaintiff Elizabeth Herrera, and minor child Z.A.G. each have suffered compensable damages, as described in more detail below, as a result of the wrongful death of Alex Gonzales, Jr. caused by the wrongful actions and excessive force of Serrato.

152. The City of Austin is liable for damages caused by Officer Serrato's use of excessive force against Alex Gonzales, Jr. The City of Austin's official policies, practices and customs were a direct and proximate cause of Officer Serrato's use of excessive force. The City of Austin's official policies, practices and customs were the motivating force behind Officer Serrato's use of excessive force against Alex Gonzales, Jr.

153. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known that APD's paramilitary training techniques, promotion of a warrior mentality, and paramilitary culture had the effect of tolerating and promoting the use of excessive force by APD police officers. The City of Austin and APD policy makers had long known that each of the individual elements of APD's warrior mindset training and culture alleged above, alone and in combination, had the effect of causing and encouraging widespread use of excessive force by APD officers. Despite full knowledge, for many years, that APD's police training and police culture fostered a culture of violence and excessive force against civilians, the City of Austin and APD acted with deliberate indifference to these constitutional violations and continued to promulgate, implement, and enforce these training practices, official policies, and its warrior-mindset policing culture.

154. Long before the death of Alex Gonzales, Jr., the City of Austin and APD policymakers had long known (and even intended) that APD's paramilitary training techniques caused a warrior mentality to become deeply and instinctively ingrained in each APD officers such that each officer would continue to view the world through the lens of the warrior mindset at all

times, while on-duty or off-duty. Officer Serrato had undergone extensive police officer training with APD utilizing the paramilitary training techniques and had been subject to and a part of APD policing culture such that the warrior mentality characteristics described above had been deeply instilled within him at an instinctive level.

155. On information and belief, Serrato believed that his actions with respect to Alex Gonzales, Jr. on January 5, 2021 (including but not limited to shooting Alex) would meet with the approval of supervisors and other Austin investigators of the events because he believed that his actions complied with the City of Austin's and APD's official policies, practices, and customs.

156. The City of Austin ratified the actions of Serrato and his use of excessive force against Alex Gonzales, Jr. by: (1) conducting a biased and improper investigation of Gutierrez's actions with the intent of clearing him from wrongdoing rather than pursuing the true facts, (2) finding that his actions did not violate APD policies, procedures, or customs, (3) returning him to patrol duty without suspending him or providing other appropriate discipline, without retraining him, and without any other employment consequences, and (4) continued to promulgate, implement, and enforce the inadequate and dangerous policies, practices, and customs of APD in light of Serrato's actions on January 5, 2021.

C. Each Plaintiff Has Suffered Significant Damages as A Result of the Excessive Force Used By Gutierrez and Serrato.

157. Alex Gonzales, Jr. was a happy, loving man who adored his parents, who cherished his newborn son, and who embraced his new role as a father to Z.A.G. Alex's tragic and unnecessary death at the hands of police violence, acting in violation of Alex's constitutional rights, caused severe and permanent damages, including Alex's death.

158. Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera each seek to recover the following categories of damages in their respective capacity as wrongful death beneficiaries of

Alex, pursuant to Texas Civil Practice and Remedies Code § 71.004(b):

a. Mental anguish damages (past and future) for the emotional pain, torment, and suffering each Plaintiff has experienced and will continue to experience because of the death of their son;

b. Physical pain and suffering (past and future) each Plaintiff has experienced and will continue to experience because of the death of their son;

c. Loss of companionship and society damages (past and future) for the loss of positive benefits flowing from the love, comfort, companionship, and society that each Plaintiff would have received from Alex had he lived; and

d. Pecuniary loss damages (past and future) for the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that each Plaintiff would have received from Alex had he lived.

159. In their capacity as "Next Friend" to Z.A.G., Plaintiffs assert that Z.A.G. has suffered the following categories of wrongful death damages that may be recovered pursuant to Texas Civil Practice and Remedies Code § 71.004(b):

a. Future lost wages, lost earning capacity, and loss of economic support from Alex Gonzales, Jr.;

b. Mental anguish damages (past and future) for the emotional pain, torment, and suffering Z.A.G. has experienced and will continue to experience because of the death of Z.A.G.'s father, Alex;

c. Physical pain and suffering (past and future) Z.A.G. has experienced and will continue to experience because of the death of Z.A.G.'s father, Alex;

d. Loss of companionship and society damages (past and future) for the loss of

positive benefits flowing from the love, comfort, companionship, and society that Z.A.G. would have received from his father, Alex, had he lived; and

e. Pecuniary loss damages (past and future) for the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that Z.A.G. would have received from Alex had he lived.

160. Each Plaintiff (both individually and as "Next Friend" to Z.A.G.) further seeks to recover the following categories of damages:

a. Prejudgment and post-judgment interest;

b. Costs of court;

c. Reasonable and necessary attorneys' fees incurred by Plaintiffs through trial, along with reasonable and necessary attorneys' fees that may be incurred by Plaintiffs for any post-trial proceedings or appeal, pursuant to 42 U.S.C. § 1988; and

d. Any further and additional relief to which Plaintiffs may be legally entitled.

V. REQUEST FOR A JURY TRIAL

161. Plaintiffs request a jury trial on all issues that legally may be tried to a jury.

VI. PRAYER FOR RELIEF

162. Plaintiffs request that the City of Austin be summoned to appear and answer Plaintiffs' allegations. After a jury trial regarding the asserted claims and causes of action, Plaintiffs pray the court enter judgment in their favor on the asserted claims under 42 U.S.C. § 1983, assess monetary damages for the injuries alleged above, and award any other relief to which Plaintiffs are legally entitled.

Dated: August 22, 2023

Respectfully Submitted,

/s/ Donald Puckett
Donald Puckett (Texas Bar No. 24013358)
Clifford Chad Henson (Texas Bar No. 24087711)
(*Application for admission forthcoming*)
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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ *Donald Puckett*
Donald Puckett

COMPLAINT EXHIBIT A

Memorandum

Austin Police Department

Headquarters Bureau/Training Division

To: **Chief Brian Manley**
From: **Dr. Sara Villanueva**
Date: **May 22, 2020**
Subject: **APD Training Academy Review and Strategic Plan**

This memo provides the background and context necessary for a full understanding of the review analysis and strategic plan that follow. In September 2019, I began my second career as the inaugural Organizational Development and Training Manager at the Austin Police Department, specifically focusing on the Training Academy. With over fifteen years of leadership experience in academia, I came to APD with significant proficiency in curriculum development, teaching and learning methods, and Diversity, Equity, and Inclusion work.

While getting acclimated in the first months, my initial priority at the Training Academy was to conduct a needs assessment. Soon thereafter, I decided instead to conduct a more comprehensive SWOT analysis to create a developmental pathway to organizational and academic success for academy instructors, cadets, and leadership. After the initial report was drafted, I was informed by APD leadership that the full and final report would be included in APD's official response to Resolution No. 20191205-066. To that end, what follows is the final report which includes the SWOT analysis, followed by a strategic training plan draft that will require review and approval from the Chief of Police and the APD Executive Team.

The creation of this document has been an iterative process. The initial draft was based on observations made early on in my tenure at APD. The final report incorporates those early observations as well as recent, more comprehensive professional experiences. It is important to note that although I am employed by APD, and although I did, on occasion, seek out consultation from colleagues in academia with expertise in specific fields, the work outlined in this report is independent, objective, and supported by research wherever possible. As such, a reference page is included as an addendum for further review.

Respectfully,

Sara Villanueva, Ph.D.

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2020

AUSTIN POLICE DEPARTMENT TRAINING ACADEMY

SARA VILLANUEVA, PH.D.

ORGANIZATIONAL DEVELOPMENT & TRAINING MANAGER | May, 2020.

Austin Police Department

CADET TRAINING ACADEMY

REVIEW ANALYSIS

This analysis was completed with the understanding that the reviewer's perspective can and will change with more time, experience, and insight at the Austin Police Department Training Academy. It should be noted that despite some overlaps in instruction, the following assessment primarily focuses on the academic programming, also known as the cadet side of the training academy, and not necessarily on the Learning Skills or Continuing Education areas.

The method of review is based on conducting a SWOT analysis, which is an organizational/planning tool used to understand the Strengths, Weaknesses, Opportunities, and Threats involved in running an organization. SWOT analysis aims to identify key internal and external factors seen as important to achieving an objective. SWOT analysis groups key pieces of information into two main categories:

Internal factors — the strengths and weaknesses internal to the organization

- What do you do well?
- What unique resources can you draw on?
- What could be improved?
- Where do you have fewer resources?

External factors — the opportunities and threats presented by the environment external to the organization

- What opportunities are open to you?
- What trends could you take advantage of?
- How can strengths be turned into opportunities?
- What threats do your weaknesses expose you to?

SWOT analysis is typically used as part of a strategic planning process, and in this case is being utilized to understand what works, what doesn't, and guide the organization in creating a strategic plan for the Austin Police Department Training Academy.

Strengths	must be maintained, built upon or leveraged.
Weaknesses	must be remedied, changed or stopped.
Opportunities	must be prioritized, captured, built on and optimized.
Threats	must be countered or minimized and managed.

Strengths

Information gathering stage of analysis. Reviewer has had numerous formal and informal meetings and discussions with the training commander, training leadership, staff, several instructors, and a few patrol officers. Further, reviewer has conducted class observations and participated in numerous departmental and academy leadership meetings. This collection of qualitative data yielded the following observed strengths that have been organized into potential areas of strategic focus. Note that this is an assessment as of the present time (i.e., snapshot), and does not reflect any historical context or institutional memory on the part of the reviewer.

Organizational Structure

- Excellent leadership. The training academy Commander is very organized, responsive, and consistently communicates very well with leadership at the training academy. Commander holds weekly briefing meetings with leadership, systematically reviewing progress of cadets in academics, learned skills, personal issues, etc. Very thorough, very informative. Through the chain of command, academy leadership and instructors all work collaboratively to keep one another informed of any changes in status for each and every cadet.
- Hierarchical structure in place lends stability and consistency in the ability to effectively communicate and direct information up and down the chain of command.
- All members of academy leadership are well informed and keenly aware of TCOLE and BPOC standards and remain vigilant about compliance. After numerous meetings with leadership who directly oversee academy courses and instructors (Sergeant and Corporal over cadet training), it is clear that training academy curriculum carefully adheres to three regulatory areas: TCOLE, BPOC, and Austin Police Department, and has, over time, incorporated/added courses in response to legislative mandates.
- Structure of Instructor Departments, POCs of those departments, and which classes are taught by which department/instructor is documented and stored on network drives.

Culture

- While still supporting the paramilitary structure, academy staff all contribute to a relaxed and family-like atmosphere. The work environment is such that people are respectful, encouraging, and supportive of one another. These daily behaviors create a cultural milieu that is extremely important because it appears to lead to mutual trust, collective efficacy, and confidence in the academy.
- Instructors informally gather during lunch to communicate any relevant information regarding cadets or classes, but more importantly, to check in with one another, decompress, and build a shared community. This comradery is vital to morale, job satisfaction, and productivity.
- Ethnic and racial diversity in academy leadership is excellent. Despite being securely set in a chain of command, diversity of thought, perspective, gender, etc. is actively sought out and thoughtfully considered when making decisions at the weekly academy leadership team meeting. If the objective is to have a police force that reflects the community they protect, APD Recruiting has made great strides in efforts to increase the number of female recruits. It is similarly important to be inclusive of *all* diverse groups and perspectives: transgender and non-binary, diverse religious beliefs, etc. An excellent example of APD Training inclusion, which also incorporates community input, is a series of Informa training modules on Transgender issues and the use of a gender-neutral affidavit. Sgt.

Michael Crumrine and training academy instructor Ofc. Greg Abbink have included subject matter experts in the community as part of this important project. Clearly, being deliberate in the awareness of individuals' experiences is an ongoing goal for everyone. That said, increased diversity in the faculty would be beneficial, as they are the ones with whom cadets interact and are influenced by most. More on this later in the Weaknesses section under Diversity, Equity, and Inclusion.

Curriculum

Note that a complete and comprehensive review of the entire curriculum will take significant time, and in my opinion, should be an ongoing, iterative process. This said, the curriculum review process is currently underway. The following observations are based on the initial review:

- When considering the length of the curriculum (8-month academy), it is understood that the most recent revision of the BPOC resulted in many (8) of the classes currently taught at the Academy as Intermediate level now be considered part of the BPOC. Continuing work in this review will examine potential opportunities for efficiencies and possible consolidations.
- Training leadership, specifically the Sergeant and Corporal over cadet training work diligently, and go to almost extreme lengths to ensure complicated and ongoing schedule of courses for academies (regular and modified) meet expected regulatory standards. They also go to great lengths to manually overlap concurrent class schedule to ensure that all required courses are included and look for potential conflicts in schedules. This too is an iterative and tedious effort. This point will be further discussed in Weaknesses section.
- Sequencing of courses in academy curriculum is normally considered when new cadet classes are scheduled, particularly when classes begin to overlap. While preparing this document, effects of the national pandemic COVID-19 took hold and required training to be moved online. In doing so, the priority with respect to sequencing was to move all 'cognitive' courses online, while pushing all experiential/hands-on courses (i.e., firearms, defensive tactics) toward the end of the schedule, when cadets are expected to return to campus.
- In preparation for Cadet Class #143, instructors were tasked with conducting a new review of individual lesson plans for their respective courses to ensure compliance with new BPOC standards; and further, to assess time required to teach each course to meet each BPOC module time requirement. In addition to this general time assessment, particular attention was paid to those subjects/courses in which APD actual hours taught far exceed the minimum hours required by BPOC again to look for possible efficiencies.
- Overall curriculum is in compliance of TCOLE standards, and is continually monitored for compliance when updates are made to any regulations. Further, leadership work with instructors to review curricula to ensure TCOLE/BPOC requirements are met.

Teaching Effectiveness

- With few exceptions, the majority of instructors that I have observed are well prepared in the course content outlined using TCOLE lesson plans. It is clear that most faculty have excellent command of experiential knowledge as it relates to the topic they teach.
- In general, instructors are well-organized, run classes efficiently, and begin and end on schedule.
- Of the instructors observed, teaching methods and styles vary significantly. Some due to personality, some to teaching experience, and some due to the teaching methods to which they are accustomed or trained. It is clear that some instructors are more comfortable and at ease in the classroom than others. *The possible influence of a class observer on teaching should be considered.*

The vast majority of academic classes observed thus far present content material on Power Point slide presentation format, but have varying degrees of interactive learning.

- Overall, instructors do a fine job of checking for understanding, and generally being open to questions after each section/class.
- All instructors who have been observed have expressed being open to feedback and suggestions to improve teaching.
- Most recently, the abrupt necessity to move courses online due to COVID-19 has challenged instructors to transition to online teaching, which is no easy task. Based on my observations of the online courses thus far, I have been impressed by the work that has been done by instructors to make this unexpected transition. Again, I have witnessed significant variability in the ease in which the transition has been made as well as with the teaching methods and learning strategies employed by instructors; but overall, instructors have risen to the challenge done an outstanding job during these unprecedented and difficult times.

Weaknesses

Based on initial observations, individual interviews/meetings, baseline information-gathering for context purposes (reading TCOLE, BPOC, President's Report, Community Policing, ICAT, and Matrix), and more recently attendance at the inaugural National Symposium on Police Academies and Training and the 2019 TCOLE Conference, items below are identified not simply as *weaknesses* in the Academy, but as *challenges* for potential future strengths in the overall objective to maximize organizational development and teaching effectiveness.

Organizational Structure: Process Improvement

One of the most pressing challenges pertains to systematic and reliable processes that must be put into place in order to ensure consistency, reliability, and efficiency. Although significant daily efforts are made by staff to keep the training academy running effectively, having consistent and reliable processes in place would contribute to running it effectively *and* efficiently. It would also lead to programmatic sustainability and security, given staff changes across time. Current challenges identified thus far in this category include:

- Process around communication and relevant/important dates and notices within the Academy involving leadership/ instructor/cadets. Presenting relying primarily on email and verbal messaging.
- Processes around and organization of course material for instructors - in addition to the ability to post announcements or communicate with entire class or individual student cadets (versus email). Presently all material saved to the network. Organization of the network folders is unclear, with several files being outdated or empty, and little consistency in classification or naming structure.
- Process of scheduling academy classes (overall – excel sheet with dates of academy cadet classes across years), and specific course schedules for each cadet class (i.e., #141, 142m, 143). At present, there is a clear overreliance on Excel to create academy schedules – primarily because it is the only tool available; secondarily because it is the way it has always been done, thus default.
- Consistent and ongoing/sustainable process of tracking BPOC/Academy course alignment and hours. Currently, all scheduling is done manually using Excel spreadsheets to create weeks 1- 32 populated by module/topic, printing out, manually manipulating the printed weeks on a table, then

going back to Excel to make modifications. The current system of scheduling, course alignment, and tracking is inefficient, time consuming and leaves significant room for human error. Because it is all done without the use of any scheduling software, the chances for error are high, thus creating the need for a reliable process. Because it is well understood that staff turnover is a reality, a clear process must be put in place to ensure consistency, reliability, and sustainability regardless of staff turnover.

- Process of systematic and consistent organization of all training academy related documents, including but not limited to documentation required and tracked by TCOLE: currently all held on the network Drive. Note that documents referred to in this section are separate from instructor teaching material. A process that involves a clear and systematic file naming structure, classification, or taxonomy is needed.

Culture

- Paramilitary culture
    - APD Training Academy operates under a paramilitary training format with strict adherence to chain of command and employs 'behaviorist instructional methodologies' which rely on the assumption that learning occurs primarily through the use of reinforcement schedules, behavior modifications, and other behavioral approaches (Birzer, 2003; Birzer and Tanneill, 2001, 2004).
    - Although the paramilitary-based training format may build camaraderie, research has shown that it tends to be associated with high dropout rates (Blumberg, Schlosser, Papazoglou, Creighton, & Kay, 2019), as it fails to acknowledge individual differences in learning styles, personalities, and interpersonal skills in cadets as well as instructors.
    - There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-oriented police services model. A growing body of research has shown that paramilitary-structured academies do not align well with the principles of community policing and problem solving which are based on collaborations and partnerships (Chan, Devery, & Doran, 2003; Chappell & Lanza-Kaduce, 2010; Conti, 2011).
    - This model also overrides and perhaps even neglects basic principles of adult-learning theory (andragogy).
- Diversity, Equity, Inclusion
    - Diversity amongst the faculty is paramount for any learning institution. For decades, researchers, social scientists, and teaching & learning scholars have argued the various merits of not only having a diversified student body, but just as importantly, a diverse faculty. With respect to teaching, mentoring, and training, there is also significant evidence showing links between institutions having diversity in the faculty and various indicators of achievement in students from diverse backgrounds.
    - The good news is that there has been an increase in diversity (gender and ethnicity) when it comes to cadets recruited and accepted into the APD Training Academy. And despite recent increases in diversity amongst leadership at the training academy, the not-so-good news is that the faculty teaching those cadets are still primarily White males. Moreover, the cultural ethos at the academy is still securely grounded in patriarchal belief systems and practices, with some concerning indicators being subtle or subliminal and others more obvious.
- Wellness

- Instructors' physical wellness is attended to and evidenced by routine individual and group workouts. However, mental and psychological wellness should be similarly encouraged and supported, particularly as it relates to the stressors associated with back to back teaching.
- Building psychological and emotional wellness in cadets should also be a priority that is embedded into the curriculum. The current curriculum includes some coverage of stress management and mindfulness at the beginning of the academy, but this is an issue that should be reinforced throughout the entire 32-week academy.

Curriculum

- As part of the internal audit mandated by Resolution 66, specific courses in the existing curriculum are currently being reviewed. Recommendations regarding assessment of those courses as well as evidence-based recommendations will be included in a review summary report.
- The 32-week academy contains courses that include the Basic Police Officer Courses, and in addition, intermediate certification courses as well as APD specific courses. In accordance with the Texas Commission on Law Enforcement regulations, BPOC courses cannot be eliminated or modified; however, the value add of other courses should be assessed to eliminate any courses that are not as relevant or impactful as in the past, and perhaps include new courses that fall in line with updated, innovative curriculums being used in other training academies across the country.

Teaching Effectiveness

Current challenges include:

- A major area with opportunities for development relates to Instructor Preparedness, Training, and Evaluation. The following observations and subsequent suggestions are based on the fact that effective instruction is at the core of what we do at the APD Training Academy.
  - Instructor Job Description, Expectations, and Evaluation: Under *Duties and Responsibilities*, the current job description for Cadet Training Instructor does not explicitly include any descriptions or expectations of teaching or pedagogical training if hired. The job description is essentially a lengthy list of items. The inclusion of listed items such as "Ability to write legibly and to read" communicates a very low academic standard, particularly given the position as an educator.
  - Regarding performance evaluations, the instructor evaluation form (SSPR) must also incorporate corresponding teaching/pedagogical expectations reflecting those detailed in Cadet Instructor job description. In sum, instructors must be appropriately trained and developed as professional educators, with subsequent evaluation of their teaching effectiveness.
  - Instructor Training: Cadet Training Instructors do not receive any formal preparation or training on how to teach effectively. The Basic Instructor Course (BIC) offers TCOLE mandated basic information regarding logistical issues around teaching, but does not go into more nuanced, yet highly impactful teaching strategies and considerations, particularly as they relate to adult learning theory. After the BIC, new instructors receive guidance on following the processes already in place, and are expected to shadow current instructors in preparing lesson plans and teaching. However, there is no formalized onboarding process in place to determine when they have sufficiently

prepared to begin teaching independently, other than existing instructor discretion. A more formalized professional development plan should be created and utilized.

- Instructor Teaching Resources: Both incoming and existing instructors have very little resources regarding effective teaching methods that focus on adult learning theory or teaching in the context of continually changing cohorts.
- Instructor responsibilities on Course Content. In conducting numerous informal class observations, and in reviewing lesson plans and Power Point presentations, it is clear that there is considerable variability in quality and understanding of content material being presented. It is clear that TCOLE provides the essential material to be covered via pre-prepared lesson plans. That said, it is the responsibility of each instructor to learn the material, conduct further research for understanding and context, and obtain a firm understanding of the course material before teaching the class.

- Another area with opportunities for development relates to exams being created for and given to APD Cadets. Despite other areas of assessment required for successfully completion of the APD Training Academy (PT, Firearms, etc.), exam performance carries substantial weight in the success or failure of academy completion. Due to the policies around number of test failures, and the 80% passing standard, cadets are dismissed, at times, for academic reasons. Thus, a thorough review of testing policies and procedures is warranted, as well as investigations into more current testing platforms. At present, the process of creating exams is adequate, but not optimal, as it is tedious, over-reliant on multiple choice questions (not ideal), and perhaps a bit antiquated.

Opportunities

In the context of SWOT analysis, the section on Opportunities focuses on elements in the larger environment/community that could be used to an advantage for the Austin Police Department. Opportunities must be prioritized, captured, built upon and optimized. Below are considerations for this category.

Organizational Structure: Process Improvement

The vast majority of problematic issues in the previous section would be addressed by simply adopting a secure and reliable Learning Management System with the appropriate capabilities, and establishing a reliable process. After several months spent investigating various platforms that could align with the needs of the academy as well as meet necessary City of Austin security criteria, academy leadership is now considering the adoption of Informa LMS, Scheduler, and Evaluation/Testing bundle. This bundle of services will increase efficiency, organization, security, and in the long term, increase productivity.

A securely managed LMS could not only provide a platform for all Academy/Teaching-related material to be housed in an organized manner, but would also provide more efficiency to leadership in curriculum planning (including any updates or modifications) for current and subsequent cadet classes, save instructor time in course prep and planning, and in general make instructor's lives a bit easier by having a course set up and ready to go, even in the event that any given instructor were required to step in on short notice. Once a course is set up on the LMS, the contents: lesson plans, lecture slides, current/relevant video clips, assignment, class activities, online quizzes or exams, any collaborative work, and gradebooks are all securely housed and easily accessible to anyone with authorized secure

log-in credentials. Courses stored on the LMS would only require updates each term thereafter. Thus, an appropriate LMS can provide efficiency, ease, and save time in course preparation as well as a means by which secure communication, upcoming events, etc. can occur between all constituents at the training academy. Most importantly, it can provide security and ensure accurate BPOC and TCOLE tracking**.** Based on shared best practices between police training academies across the United States, the use of this type of technology has proven to be a prospective solution for the APD Training Academy.

Culture

Paramilitary culture

Despite many successes in the long-held paramilitary tradition, numerous scholars and community members alike have proposed a shift in the culture that currently exists in the majority of police training academies across the country. The existing culture promotes an adversarial approach to training, whereby police are prepared to be on the front lines fighting against crime. There is no doubt that this warrior mentality can be very useful in addressing certain acute situations, and of course, officer safety must continue to be a priority in training. However, most interactions with community are not acute. Instead, the focus of training should be on nurturing the relationship between police and the community they serve. The warrior mindset, and the fear that drives it, must change (Sanburn, 2016, Stoughton, 2015). It is time to reclaim the wisdom and power of servant leadership where officers are viewed as guardians that serve and protect their community.

Police departments across the nation are responding to this call to action by moving away from a paramilitary model that emphasizes fear-based learning and strict adherence to commands (i.e., the warrior model), toward an adult learning model that instead values high quality instruction and the development of critical thinking skills, effective communication, and better emotional intelligence in cadets' preparation to work collaboratively with the community they serve and protect (i.e., guardian model). Researchers stress the importance of adopting an adult learning model in training recruits to work within a community-oriented policing model (Schlosser, 2013). Using shared innovative practices from other police training academies, the Austin Police Department Training Academy should seriously consider this cultural/paradigm shift by moving beyond behavioral training techniques and integrating the following psychosocial skills into the curriculum to truly 'build and educate the best police officers in the nation':

- Understanding basic human behaviors in the context of policing (basic Applied Psychology course)
- Cognitive skill training (Decision-making/Judgment, Impulse control/Safety, Adaptability/Flexibility)
- Emotional skills training (Emotion regulation/Stress tolerance, Emotional Intelligence)
- Social skills training (Social competence, Teamwork/Collaboration, Assertiveness/Persuasiveness)
- Moral skills training (update and expand current teachings on Integrity & Ethics)

Further, future officers in training should be given the opportunity, while still in the academy, to actively engage with and work in the community, alongside the people that they will serve. Whether this is in the form of ride outs, and/or better yet, participation in community sponsored and community-building events. This shift in emphasis would clearly signal that APD and the training

academy are committed to rebuilding a strong, positive relationship with the Austin community. In sum, modern policing faces increased complexity, which requires officers to respond to difficult and quickly changing challenges of a diverse society in more flexible ways (McGinley, Agnew-Pauley, Thompson, & Belur, 2019). Thus necessitating a greater emphasis on the afore mentioned skills.

Diversity, Equity, Inclusion

The issue of race as it relates to policing is clearly an area of concern for many. Numerous efforts throughout the city and department are currently underway to address citizen concerns. At the training academy, several courses addressing multiple topics around race, culture, and community (i.e., Fair & Impartial Policing, Multiculturalism, Racial Profiling, History of Policing, and others) are currently taught in the existing curriculum. As part of the Resolution 66 internal audit, these courses are currently under substantial review and the subsequent report will offer more insight on making improvements to content and teaching effectiveness. When completed, course reviews, which are based on formative assessments, will result in several recommendations given to not only update the content of the materials to reflect current scholarly research on diversity, equity, and inclusion issues, but will also include pedagogical strategies to promote effective delivery of the material. Further, colleagues at The University of Texas School of Law, in collaboration with the Office of Police Oversight, have created a new course that gives insight into the History of Policing and Race in Austin. By including this course in the curriculum, the training academy ensures diverse perspectives are being presented when learning about police history in context.

To become more diverse and more inclusive, the training academy must examine their own organizational capacity to prepare all cadets for a world that is changing, complex, and already very diverse. APD cannot expect future officers to meet the intricate needs of our community if we cannot meet those needs within our own organization. Any disparities within the academy must be rectified by closely examining cadet recruiting policies and practices, interview and hiring board processes for cadets and instructors, yearly evaluation processes for instructors, and shifting the strategic goals of the organization toward a more inclusive excellence model. The inclusion of unconscious bias assessments into the cadet recruitment process, and cultural competency training for all academy instructors and staff would both be good examples of the training academy's commitment to Diversity, Equity, and Inclusion. Specifically, with respect to the fact that faculty of color and female faculty are underrepresented at the academy, it is worth recognizing that such underrepresentation is detrimental to the success of student cadets of color and female cadets.

As part of a culture shift whereby true inclusion of all diverse perspectives is embraced, another opportunity for APD is to include programming based on the work done by Dr. Glenn Singleton and his colleagues in *Beyond Diversity: Creating Courageous Conversations About Race*. At present, leadership at the APD Training Academy has attended the workshop. However, a formal proposal is being created to include a more comprehensive and sustainable program tailored for APD which includes Leadership Development as well as cadet and current officer education on cultural sensitivity and competencies.

Times have changed and the academy, as well as the department as a whole, must change with it. A genuine cultural shift could increase organizational agility, and would go a long way toward improving

police and community relations in Austin (Kringen, 2019; Kringen & Novich, 2017; Perez McCluskey & McCluskey, 2008; Schuck, 2016; Schuck, 2017; Silvestri, 2019; Todak, 2018).

Wellness

Instructors. To avoid instructor burnout that could lead to low morale, low effort, and low job performance, and to avoid higher turnover rates for instructors at the academy, APD leadership must be mindful of recovery time between cadet classes. At present, when accounting for both regular and modified cadet classes, instructors have very little, if any, time off from teaching between the end of one cadet class and the beginning of the next. Based on first-hand experience as well as a significant body of literature, this is a vital issue that directly impacts job performance and, in this case, teaching effectiveness.

Cadets. It would behoove both current and future officers for the academy to place more emphasis on preparing cadets to successfully cope with the emotional challenges of this profession. APD training has the opportunity to infuse into the existing curriculum comprehensive programming where mental health experts can address officers' emotional regulation and stress tolerance in an effort to build long-term skills that cadets can take into their future work- and life-experiences.

Curriculum

Based on supported arguments made in *New Directions in Police Academy Training* (Blumberg, Schlosser, Papazoglou, Creighton, & Kay, 2019), the curriculum should also include previously mentioned courses taught by content experts that focus on the following evidence-based topics: understanding basic human behaviors (i.e., a tailored applied psychology course), social skills (i.e., coping skills to help officers navigate difficult encounters when interacting with community members, as well as coping with the strain that police work places on them, their families, and friends), moral development, and effective communication strategies. These courses, along with those that focus specifically on Diversity, Equity, and Inclusion issues should be solidly grounded in current, empirical research and taught by outside scholars who have expertise in the fields.

Further, because the 32-week academy is already longer than most police training curricula, and because adding more classes without judiciously reviewing the value-add of existing courses, the academy should reconsider including all intermediate level courses as part of the curriculum before graduating new officers. From the reviewer's perspective, it makes sense that only after having some time and experience in the role of police officer should she/he/they then be expected to begin to think about intermediate level courses. The experiences themselves would help new officers make sense of and provide context for the intermediate level courses, thereby leading to more meaningful learning and retention of information.

Teaching Excellence

Make no mistake. Police training academies are institutions of higher learning. There is a nuanced but important difference between training and teaching. Training denotes a hands-on, practical, step 1, step 2 method of conveying information. Teaching seeks to impart knowledge and provide opportunities for deep comprehension and long-term retention of knowledge by relying on learning theories and engaging students using various strategies and methods. In the context of police academies, both training and teaching can go hand in hand. But, when considering the importance of the material being taught by academy instructors in the classroom, the fact that they really are creating

future officers for our community, and the fact that we need new officers to remember what they learned when out on the street, the stakes are high and we should get serious about investing in our instructors.

The reviewer recognizes that the academy is not a college or university, but it is a place of learning nonetheless. And as such, making sure that academy instructors have the training, experience, and resources necessary to reach teaching excellence should be a top priority. Instructors, cadets, officers, and the community as a whole all deserve this.

Regarding comments made in the previous weaknesses section around Instructor preparedness and development, below are reviewer recommendations:

- Revise Cadet Training Instructor job descriptions to include appropriate expectations, duties, and responsibilities around Teaching Effectiveness. Similarly, revisions to the Cadet Training Instructor evaluation (SSPR) are being suggested to ensure that the updated SSPR appropriately reflects the corresponding revisions to the job description.
- Similarly make modifications to Cadet Selection Board materials to incorporate appropriate pedagogical language throughout document. I.e., include terms such as Teaching, Active/Adult Learning, etc., to signify that the position goes beyond the ability to complete a lesson plan template and create power point slides, rather based in serious pedagogical methodology. "Grading" of presentation should also include ratings on teaching methods.
- Review our Basic Instructor Course offered at the training academy to make sure it includes information on
  - Cohort/Generational differences
  - Pedagogy/Teaching Adult Learners
  - Active and Interactive Learning in the Classroom
  - Effective Teaching Methods
- Create a series of Train the Trainer (T3) teacher education online courses that new instructors would be required to take BEFORE teaching independently. Course topics could include the following (see bullets below), and would be offered online so that new (and existing) instructors can complete them while working around their schedules. Note: this could be accomplished via the now accessible LinkedIn Learning tool where specific learning pathways can be developed specifically for academy instructors.
  - Teaching adult learners
  - Innovative teaching techniques: focus on active, interactive, and inclusive models
  - Presentation 2.0: Moving beyond Power Point slides
  - Other topics at suggestion of instructors, training academy leadership, commander
- Provide new instructors a mentor/coach (experienced instructor) for onboarding. Provide mentor instructor a checklist of items to cover with new instructor. After initial probationary period, and once new instructor is teaching independently, mentor should conduct course observations and periodically scan through instructor course material to ensure that that course content and corresponding exam content are regularly updated to reflect current/relevant course content information (including video clips, examples, activities, etc.)

Instructor resources and Professional development:

- Transform the existing training academy website to include a page/tab for instructor access only, specifically dedicated to housing various instructor resources such as empirical articles on

teaching and learning, video clips, sample class activities, instructor cheat sheets on how to keep content updated, etc.

- Create a peer-review program that would utilize class observations to provide individual instructors the opportunity to receive valuable feedback from a senior peer instructor on teaching effectiveness:
    - Class observation: Observer selects, or is assigned a course and instructor to observe.
    - Observer thoroughly reviews lesson plan and informs instructor of pending observation date.
    - Observer sits in on class, and completes a Class Observation rating/feedback form. Form would include sections such as presentation style, rapport and communication with students, content knowledge - and whether content and examples are current, etc.
    - Observer meets with instructor to give feedback on lesson plan and class.
    - Each instructor would have a minimum of one course observation per cadet class. This class observation form could/would be used by supervisor to inform the Instructor's evaluation (SSPR) ratings, as this is an indicator of Teaching Effectiveness.
- As part of the Teaching Excellence program, create incentives for instructors whereby results of various assessments including class observations designate high performers to be publicly recognized. Examples: Instructor of the Year recognition, specific lapel pins for academy instructors, certificates of recognition signed by the Chief, recognition on website.
- Develop yearly Continuing Education credit courses specifically for professional development in Teaching.
- Partner with local colleges/university's Teaching Excellence programs to access Teaching resources, symposia, workshops, etc.

Instructor responsibilities on course content:

- Before teaching any course, instructors should review the course material, investigate any possible updates to course content (including any new legislative changes and/or research findings), and have a firm understanding of content being covered. This is particularly important for any instructor teaching a new course and/or teaching new content. (It is presumed that all instructors will have taken the most current Basic Instructor course, as required by TCOLE).
- After reviewing content, instructors should make any changes and updates necessary to material to be presented (minimum: lesson plans, slides, handouts) based on legislative or research updates. It becomes obvious when instructors use the same Power Point slides, same handouts, same exam questions that have been used and re-used for years. At minimum, even when no legislative or research updates are warranted, instructors should update handouts, slides, video clips to stay current and relevant.
- All instructors should be informed that they will be observed by a peer, and should be shown the evaluation form to be aware of expectations in their teaching in their overall performance review.

Threats

Threats in the context of SWOT analysis refer to elements in the environment that could cause issues for the organization. The elements briefly described below can impede the APD Training Academy's strategic goals. These and others should be considered more thoroughly, but are briefly mentioned here.

- Sociopolitical climate/Political unrest
- Negative police-community relations
- Shortage of recruits
- Economic/Financial/Budgetary constraints
- Internal morale
- Internal discord
- Negative perceptions by public/media
- Lack of real or perceived support

Strategic Plan

Taking all information into consideration, while looking to the future to make the Austin Police Department Training Academy worthy of exemplary status, below is a proposed strategic plan outlined for consideration. Note that this is an initial draft of the plan that with assistance from APD leadership and approval from City Manager, would be fully developed to include a detailed timeline, short- and long-term goals, yearly objectives, action, and assessment plans.

2020 strategic plan

Austin Police Department Training Academy

MISSION

The Austin Police Department Training Academy promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships.

VISION

To build and educate the finest police officers in the nation.

Purpose

Our purpose is to meet the needs of our community by providing the highest quality education to future officers. Contemporary policing requires contemporary training which incorporates Adult Learning (andragogy[1]) teaching principles while maintaining and reinforcing the community-oriented police services model.

[1] *the method and practice of teaching adult learners;*

Need #1: transformation of academy to move away from paramilitary training model to education model
Need #2: address community issues around Diversity, Equity, and Inclusion (DEI) concerns in training
Need #3: ensure all resources are available for instructors to reach teaching excellence

A New Environment

Training academies across the country are facing challenges in adapting to changing sociocultural and educational environments. While APD continues to lead the way for other departments, the training academy must make the necessary cultural shifts towards an education model to reinforce solid learning theories, adapt innovative teaching and learning strategies, and meet the demands of the new generation of student cadet.

Goal #1: introduce a cultural/paradigm shift for academy moving forward to reflect new directions in police academy training
Goal #2: provide instructors with effective professional development opportunities, feedback, and accountability plan to reach teaching excellence and include outside academics/civilians as academy instructors for some courses
Goal #3: continually innovate and evaluate to ensure cadets receive best education possible, focusing on critical thinking and problem solving, and preparing them for the challenges of modern, community-based policing
Goal #4: using the community-policing model, prepare cadets to communicate effectively, collaborate with community members, and embrace diverse perspectives when serving the Austin community

Investing in Our Future

While APD is not exempt from negative economic trends in the environment, one thing is certain: the long-term return on investing in the education of our future police officers is huge. By providing the necessary resources, instructors receive top notch professional development, cadets receive the best education resulting in long-term retention of important information, and the community benefits as a result.

Goal #1: increase budget to include upgrades in technology and training
Goal #2: increase investment in professional development programming to include pedagogical[2]/teaching resources
Goal #3: invest in Diversity, Equity, and Inclusion programming throughout curriculum

[2] *the method and practice of teaching, especially as an academic subject or theoretical*

Key Strategic Priorities

The four key themes identified in this Strategic Plan will guide our work for the next several years. These themes were generated inductively, based on operational observations, review of various bodies of literature, and the agility required by modern times to reach our objectives around educating the hearts and minds of future officers.

Cultural shift	Commitment to Diversity, Equity, & Inclusion	Academic Excellence	Resource Development

Strategic Initiatives

Drilling down, these initiatives will allow us to stay focused on the priorities that will guide our work.

- Transform para-military structure to Education/Adult Learning Model
- Emphasize Servant leadership & Guardian Model
- Clear & consistent communication/expectations
- Community-based curriculum
- Emphasize skills in Cognitive, Emotional, & Social areas
- Prioritize wellness throughout the curriculum
- Modern-day Policing

- Cultural competence assessments & development
- Incorporate implicit bias evaluations into recruitment process
- Infuse DEI programming throughout academy to include training for leadership
- Increase diversity in teaching faculty
- Implement recommended changes in teaching methods
- Implement recommended changes to course content
- Include simulations and role plays that pertain to difficult cultural or racial situations

- Review and revise Instructor position description evaluation
- Establish consistent onboarding process
- Regular class observations
- Set expectations and provide teaching resources, then hold accountable
- Reward excellence: either monetary and/or awards and recognitions
- Provide instructors time to develop courses
- Professional Development opportunities
- Partnership with local colleges/universities Teaching & Learning Excellence programs (attendance at yearly teaching symposium and access to resources)
- Civilianize some instructor positons for specific courses that require expertise in field

- Higher pay for prior education and incentive pay for instructors
- Establish instructor wellness program
- Prioritize tech upgrades to include LMS, Scheduling software, internal academy site
- Manage teaching load and establish equitable process of work distribution
- Select and train stellar Field Training Officers (FTO) to set good examples
- Improve cohesiveness between academy and FTO to ensure consistency in training
- Establish a Community placement opportunity for cadets to begin building relationships with community

References

Birzer, M.L. (2003). The theory of andragogy applied to police training. *International Journal of Police Strategic Management*, vol. 26.

Birzer, M.L. & Tanneill, R. (2001). A more effective training approach for contemporary policing. *Police Quarterly*, vol. 4 (2).

Birzer, M.L. & Tanneill, R. (2004). Andragogy: Student centered classrooms in criminal justice programs. *Journal of Criminal Justice Education*, vol. 15 (2).

Blumberg, X., Schlosser, X., Papazoglou, X., Creighton, X., & Kay, X. (2019). New directions in police academy training: A call to action. *International Journal of Environmental Research and Public Health*, vol. 16 (4941).

Chan, Devery, & Doran (2003). Fair cop: Learning the art of policing. *University of Toronto Press*.

Chappell & Lanza-Kaduce, (2010). Police Academy Socialization: Understanding the Lessons Learned in a Paramilitary-Bureaucratic Organization. *Journal of Contemporary Ethnography*.

Conti, (2011). Weak links and warrior hearts: A framework for judging self and others in police training. *Police Practice & Research*, vol. 12 (5).

Kringen, A.L. (2019). Females and the police academy. *The Encyclopedia of Women and Crime*.

Kringen, A.L. & Novich, M. (2017). Is it 'just hair' or is it 'everything'? Embodiment and gender repression in policing. *Gender, Work & Organization*, vol. 25 (2).

McGinley, B., Agnew-Pauley, W., Tompson, L., & Belur, J. (2019). Police recruit training programmes: A systematic map of research literature. *Policing*, vol. 0 (0), pp. 1 24.

Perez McCluskey, C. & McCluskey, J.D. (2008). Diversity in Policing: Latino representation in law enforcement. *Journal of Ethnicity in Criminal Justice*, vol. 2 (3).

Sanburn, J. (2016). The woman who is restoring order to law. *Time*, October, 13, 2016.

Schlosser, M.D. (2013). Training adults to become police officers at the University of Illinois Police Training Institute. *Law Enforcement Executive Forum*.

Schuck, A.M. (2016). Citizen complaints and gender diversity in police organisations. *Policing and Society: An International Journal of Research and Policy*, vol. 26 (8).

Schuck, A.M. (2017). Female officers and community policing: Examining the connection between gender diversity and organizational change. *Women & Criminal Justice*, vol. 27 (5).

Silvestri, M. (2019). In search of diversity: An embodied account of police leadership. *Police Leadership* (pp. 99-120).

Stoughton, S. (2015). Law enforcement's "warrior" problem. *Harvard Law Review*, vol. 128.

Todak, N. (2018). Investigating perceptions of race and ethnic diversity among prospective police officers. *Police Practice and Research: An International Journal*, vol. 19 (5).

COMPLAINT
EXHIBIT B

MEMORANDUM

TO: Mayor and City Council

FROM: Brion Oaks, Chief Equity Officer

THRU: Nuria Rivera-Vandermyde, Deputy City Manager

DATE: December 29, 2020

SUBJECT: Equity assessment SWOT analyses and report on racial inequities within Austin Police Department

The purpose of this memo is to provide a brief overview of two bodies of work documenting racial inequities within the Austin Police Department (APD). The first body of work contains a series of evaluations of seven division-level equity assessment responses and the Strengths, Weaknesses, Opportunities, and Threats (SWOT) identified by a third-party evaluator, The Peace Mill Research and Communications.

The second body of work is a report prepared by Joyce James Consulting to help identify racial inequities within APD and develop immediate and prolonged strategies to eliminate them. Key components of the scope of work addressed by this report include a documentation review relevant to APD and racial disparities; survey of the APD climate and culture including selected interviews; facilitation of the Groundwater Analysis® training and debrief for APD leadership; and collaboration with APD and the Equity Office to develop strategies and objectives based on the findings.

Background

In an effort to address racial inequity in Austin, City Council passed Resolution No. 20150507-027 in May 2015, which directed the City Manager to evaluate the impact of existing City policies and practices on racial equity and develop an Equity Assessment Tool to be used across City departments. The four sections of the Tool are designed to evaluate: Department Culture, Community Engagement, Budget, and Alignment with the Strategic Direction 2023. After a third-party evaluator develops a SWOT analysis based on responses to the Tool, the department reconvenes to develop an action plan with three to four interventions that they can implement within a year. It is designed to be a process of continuous improvement, with departments revisiting the Tool and developing new action plans every cycle.

In 2018, City Manager Spencer Cronk supported the expansion of departmental equity assessments and mandated that all City departments complete the process. The second equity assessment cohort included the Austin Police Department, an immense organization with 2,646 employees divided among 48 divisions. Due to the department's size and input from the community, the Equity Office determined that it would benefit the process, the community and the Police Department to directly engage community members and APD employees in a series of dialogues over several months as part of APD's equity assessment process.

In 2019, the Equity Office began engaging in this process with seven (7) divisions within the Austin Police Department. The divisions included in this pilot series were Training, Recruiting, Data Planning, Internal Affairs, Finance, Human Resources, and Victim Services.

After the equity assessment process, APD leadership identified the need for an additional process to dive deeper into the culture of the Department, as well as support identifying potential solutions to address equity concerns. After consultation with the Equity Office, APD identified Joyce James Consulting, who worked in collaboration with the Office to draft and plan a broader cultural assessment and intervention process.

Overview of Equity Assessment Process and SWOTs

As part of the City's equity assessment process, APD staff and officers, community leaders, and Austin residents gathered together for a series of dialogues in 2019, during which community members could engage directly with APD representatives. The discussions centered around each division's responses to the Equity Assessment Tool and were designed to add a level of community accountability to the equity assessment process.

Representatives from each division responded to community members' questions, which were generated in response to answers from APD's equity assessment. After division representatives answered initial questions, community members and APD engaged in dialogue to clarify answers, seek and provide further information, and address community concerns related to each division's responses.

The third-party evaluator analyzed the process to identify promising practices and areas for improvement, interviewed participants from APD and the community, and analyzed all departmental responses through a SWOT analysis.

Some notable findings include:

- Erosion of community trust
- Practices and procedures that contribute to a culture of fear
- Incomplete data collection and analysis
- Failure to codify equity standards
- Lack of institutional and individual understanding among leadership with regard to principles of equity and inclusion

Overview of Report on Racial Inequities and Institutional Racism
The report produced by Joyce James Consulting (JJC) provides key findings, recommendations and responses to the JJC team's review of multiple reports related to racial inequities that exist in the culture of APD, and the impact on internal and external stakeholders. The findings informed the recommendations and beginning road map, that if implemented, have implications for beginning a journey towards creating an APD anti-racist institutional culture.

Some of the recommendations include:

- Develop an understanding of the history of institutionalized racism and its impact on poor communities and communities of color.
- Utilize training defined by anti-racist principles and embed that in cadet academy and leadership development.
- Create a clearly defined roadmap with appropriate metrics, benchmarks, and milestones that define and gauge progress towards antiracism.
- Demonstrate transparency in regularly communicating with internal and external stakeholders.

Next Steps
The Equity Office staff will follow up with APD division leads in January and February to discuss the next steps of the equity assessment process which includes developing an equity action plan with specific interventions to address areas featured in the SWOTs.

If you have any questions, please contact Brion Oaks, Chief Equity Officer, at Brion.Oaks@austintexas.gov or 512-974-7979.

Attachments: Community + APD Equity Assessment Series: Austin Police Department
Training and Recruiting Division
Data Planning Division
Internal Affairs and Professional Standards Division
Finance Division
Human Resources Division
Victim Services Division
Community Engagement Process Evaluation and Recommendations
Racial Inequities and Institutional Racism: A Report Submitted to The City of Austin Equity Office and The Austin Police Department

cc: Spencer Cronk, City Manager
Rey Arellano, Assistant City Manager
Christopher Shorter, Assistant City Manager
Brian Manley, Chief, Austin Police Department
Troy Gay, Assistant Chief, Austin Police Department
Farah Muscadin, Director, Office of Police Oversight
Devin Desai, Chief Labor Relations Officer, Labor Relations Office
Lee Crawford, Division Chief, Law Department

Community + APD Equity Assessment Series:

Austin Police Department, Training and Recruiting Divisions

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Executive Summary**
4	**Research Methods**
5	**Background: Equity Office and Equity Assessment Tool**
7	**Analysis of APD Data on Training Academy Outcomes**
10	**Data Visualizations: APD Graduating Classes by Race and Gender**
13	**Community Concerns and Response to Equity Assessment Results**
13	**Lack of Commitment to Equity Principles and Equity Analysis Process**
14	**Training Materials Create Significant Community Concerns**
14	**Qualitative Interview Findings: Dangerous, Inequitable Practices at APD Academy**
15	**Evidence Supporting the Redesign of APD Training Academy and Training Division**
18	**Recommendation: Redesign and Rebuild APD Training Academy and Training Division**
20	**SWOT Analysis: Training Division Equity Assessment Responses**
24	**SWOT Analysis: Recruiting Division Equity Assessment Responses**
29	**Community Response: Recruiting Division Assessment Responses**
30	**Conclusion, Context, and Insights**
32	**Appendix 1: APD Injury Data**
33	**About the Researcher**

Executive Summary

This report assesses the standards and practices related to diversity, equity, and inclusion at the Austin Police Department Training and Recruiting divisions. In 2015, the City Council directed the City Manager to begin a process that evaluates the impact of City policies, projects, and initiatives on racial equity in Austin.[1] As part of the equity assessment process, an independent researcher is tasked with assessing the departments, responses, collecting supplemental data, conducting interviews, and providing an extensive analysis of each department and division's equity practices to inform any subsequent equity action plans and support the department as it seeks to strengthen its equity practices and standards.

During this assessment, an independent researcher reviewed the APD Training division's self-assessment responses; conducted qualitative interviews with APD division leaders, former training academy cadets, community leaders, and Austin residents; analyzed APD Training division data, including information on recruitment, graduation rates, and injuries; and provided an analysis of the divisions' strengths, weaknesses, opportunities, and threats (SWOT analysis) related to diversity, equity, and inclusion.

This assessment found significant racial and gender disparities in the standards and practices of APD's Training and Recruiting divisions. The Training division's leadership failed to produce any measurable standards for ensuring equitable practices. The division's self-assessment identified one Black employee out of 57. Data provided by APD highlighted further disparities in graduation rates, with 81.6% of white male cadets graduating the academy compared to 48.5% of Black male cadets. Over five years, Black cadets accounted for only 5.19% of all academy graduates and were more likely to leave the academy or sustain an injury than any other racial group. All racial groups, other than white cadets, were underrepresented in graduating cadet classes. While the Recruiting division has taken the recent step of hiring a staff member to address racial disparities in the recruiting process, the number of Black, Latinx, and women cadets recruited into APD's cadet remains glaringly low. The number of cadets from these communities who graduate from the academy is even lower. This holds true for every racial group except for white cadets.

[1] Austin City Council Resolution 20150507-027

Interviews with former cadets revealed an academy culture that prioritizes physical aggression above all else. Multiple cadets stated that training staff subjected them to hours of grueling physical and psychological stress drills, refusing water to dehydrated cadets and engaging in other dangerous practices. This assessment details those practices and provides a complete analysis of APD Training division data. This report recommends that City leaders suspend all cadet classes until APD leadership and Equity Office officials can develop and implement an equity-driven action plan that reforms and rebuilds APD's Training division, including the training academy.

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third-party independent researcher to analyze responses submitted by each APD division during the equity assessment process and make recommendations for strengthening diversity, equity, and inclusion commitments within the department. The researcher employed a series of methods for collecting and analyzing data for this report, including:

- desk research, including the following:
    - reviewing the division's Equity Assessment Tool self-assessment responses
    - equity-related data related to the division's practices, such as race and gender data
    - additional data and evidence as needed and available
- qualitative interviews with a collection of stakeholders, including:
    - APD division leaders
    - Community leaders and residents
    - Former APD academy cadets
- quantitative analysis of APD data on cadet classes

The researcher used these methods to conduct an analysis of diversity, equity, and inclusion (DEI) standards and practices within APD's training division. This report contains those analyses, including an analysis of the division's strengths, weaknesses, opportunities, and threats (SWOT analysis) regarding diversity, equity, and inclusion. The report concludes with a recommendation section and commentary that addresses the training division within the context of broader reform efforts and current events related to policing and DEI reforms.

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[2] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity

[2] Austin City Council Resolution 20150507-027

Assessment Tool with “Starred Commitment” status, indicating a significant advance in open government principles and a measurable step toward implementing those principles.

Analysis of APD Data on Training Academy Outcomes

In response to a request from the researcher conducting this assessment, the Austin Police Department provided data on a series of outcomes and other variables of interest related to the APD training academy between 2015 and 2020, including:

- Demographic data on APD cadet classes
- Graduation rates of cadets
- Reasons for voluntary or involuntary termination
- Comprehensive data on injuries sustained by cadets during training

Equity Limitations of APD Demographic Data Collection Methods

For the purposes of conducting an equity assessment, it is encouraging when any public institution collects demographic data. The APD data is helpful for some analysis, but it should be noted that there are several limitations caused by the format of the demographic data that APD collects:

1. Binary gender: APD's intake forms for cadets only allow a binary male/female option. This is an outdated approach to collecting gender data that discriminates against individuals who are non-binary, transgender, gender fluid, or who do not otherwise identify as male or female.

2. Limited categories for race: APD's intake forms allow cadets to identify as one of four races/ethnicities: White, Black, Hispanic, or Asian. This is an incredibly limited and outdated format for collecting race/ethnicity data that omits and discriminates against individuals who identify as Indigenous, Middle Eastern/North African, Latina/Latino (different than Hispanic), bi-racial or multiracial, or who otherwise identify as a race or ethnicity other than the four options provided on APD's intake forms.

Assessment of Data on Graduation Rates

Between 2015 and 2020, at least 638 cadets were recruited into APD's training academy. Of those 638 cadets, 464 (72.73%) graduated from the academy.[3] Due to errors in the demographic data provided by APD to the researcher conducting this analysis, data from the 38th cadet class was omitted from some of the demographic analysis in this study (see footnote 2). The sample used for this analysis of graduation rates includes twelve complete cadet classes, including 443 graduating cadets. Of the 443 cadets who graduated from the academy and were included in this equity analysis, 309 (69.75%) were white, 92 (20.77%) were Hispanic, 23 (5.19%) were Black, and 19 (4.29%) were Asian. Of a sample of 148 cadets who did not graduate and left the academy either voluntarily or involuntarily, 89 (60.14%) were white, 31 (20.95%) were Hispanic, 22 (14.86%) were Black, and 6 (4.05%) were Asian. The overall graduation rate for APD training academy cadet classes between 2015 and 2020 was 77%. However, when disaggregated by race and gender, the graduation rates highlight yet another significant inequity in APD's training division. During the same period, the graduation rates for APD cadets, disaggregated by race and gender, were as follows:

Figure 1. APD Training Academy Average Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[4]

Source: APD Data provided upon request by the researcher

[3] APD provided graduation data from 2015-2020, from the 130th through the 142nd cadet classes. Errors were discovered in the data for the 138th cadet class, so that data has been omitted from the demographic sections of this analysis. The class size was small and the omitted numbers do not shift the overall quantitative findings of this report. When updated data is provided by APD, this report will be updated to reflect those numbers.

[4] Over five years, APD only recruited one Asian woman, who successfully completed the academy.

APD's data on its cadet classes illustrates an all-too-common occurrence among municipal police agencies across the US: their ranks do not reflect the makeup of the community they are sworn to serve and protect. According to the U.S. Census Bureau population estimates for 2019, Austin is a "majority minority" city.[5] 48.3% of Austin's residents are white (non-Hispanic). 34.3% are Hispanic, 7.8% are Black, and 7.3% are Asian. Although APD does not provide more than four racial categories in its data, the census also identifies 0.6% of Austin's population as American Indian and Alaskan Native and 3.3% as two or more races. This data shows that the racial demographics of APD's graduating classes differ starkly from the demographic makeup of Austin as a city.

Assessment of Data on Injuries Sustained by APD Cadets

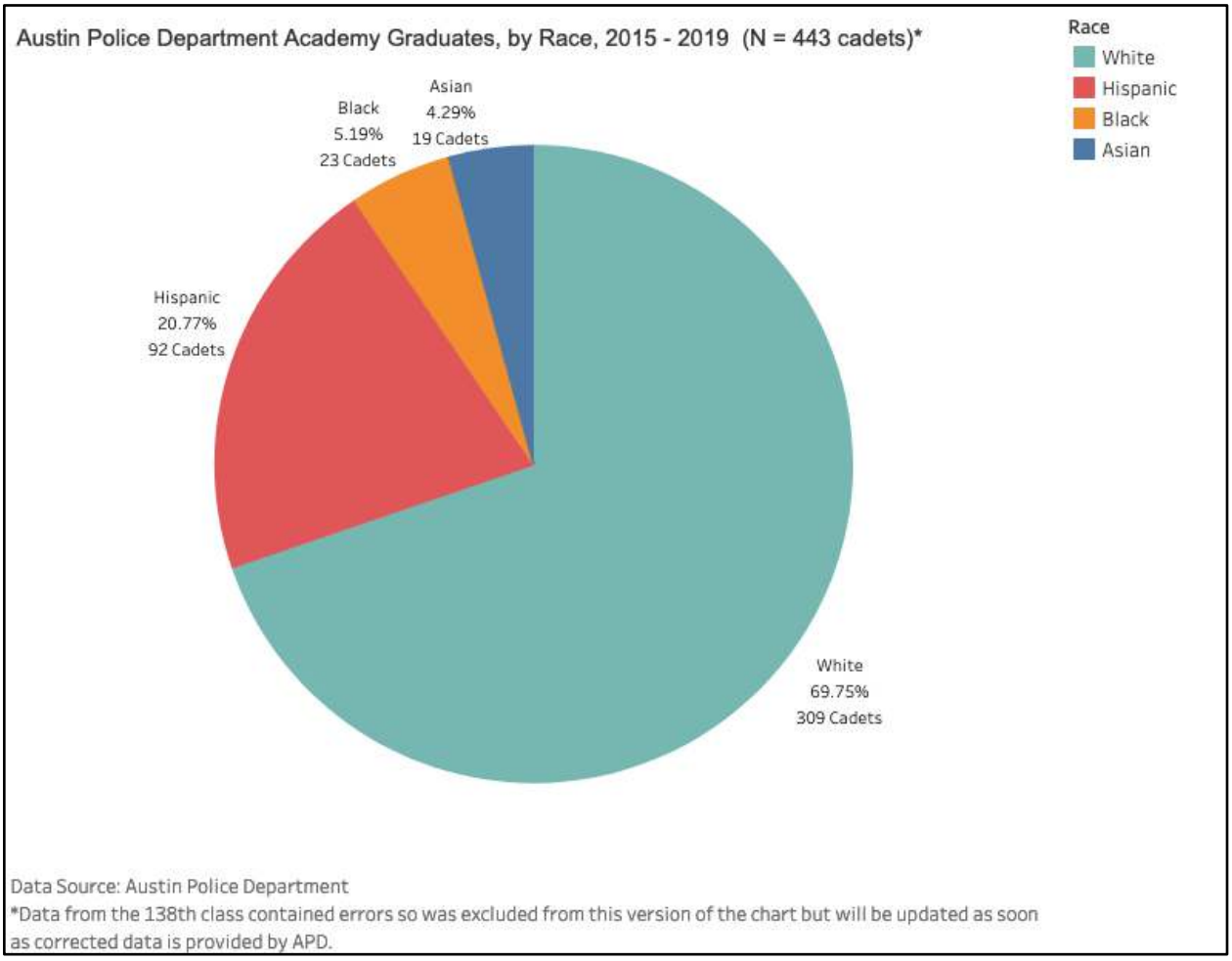
According to data provided by APD, at least 509 injuries occurred during the APD training academy between 2015 and 2020. Of the cadets who were injured and included in this data, 348 (68.37%) were white, 85 (16.7%) were Hispanic, 57 (11.2%) were Black, and 19 (3.73%) were Asian. While the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%). APD's data illustrates inequitable outcomes for Black cadets who enroll in the APD training academy. Black cadets in APD's training academy are underrepresented when compared to the population of Austin, less likely than their peers to graduate from the academy, and more likely to be injured during APD's training academy than any other race.

[5] While the term "majority-minority" is itself problematic, we employ it here to illustrate that even by an inaccurate and inequitable census bureau's standards, APD's graduating classes do not reflect the city's population; US Census Bureau 2019 population estimates for Austin can be found at https://www.census.gov/quickfacts/fact/table/au.stincitytexas/LND110210.

Data Visualizations: APD Graduating Classes by Race and Gender

The following data visualizations illustrate the race and gender of APD's academy graduates. The data used to construct these visualizations was provided by APD's Chief Data Officer and contain cadet data for from 2015 to 2020. The data includes the 130th through 142nd APD cadet classes.[6]

Figure 2. APD Academy Graduates by Race



[6] Errors were discovered in the data from the 138th cadet class. Therefore, that class was omitted from these visualizations. The 138th cadet class was relatively small, and the omission of that data does not alter the quantitative findings of this analysis. The report will be updated when the corrected data is received from APD.

Figure 3. APD Academy Graduates by Race, 2015 - 2020 (Men)

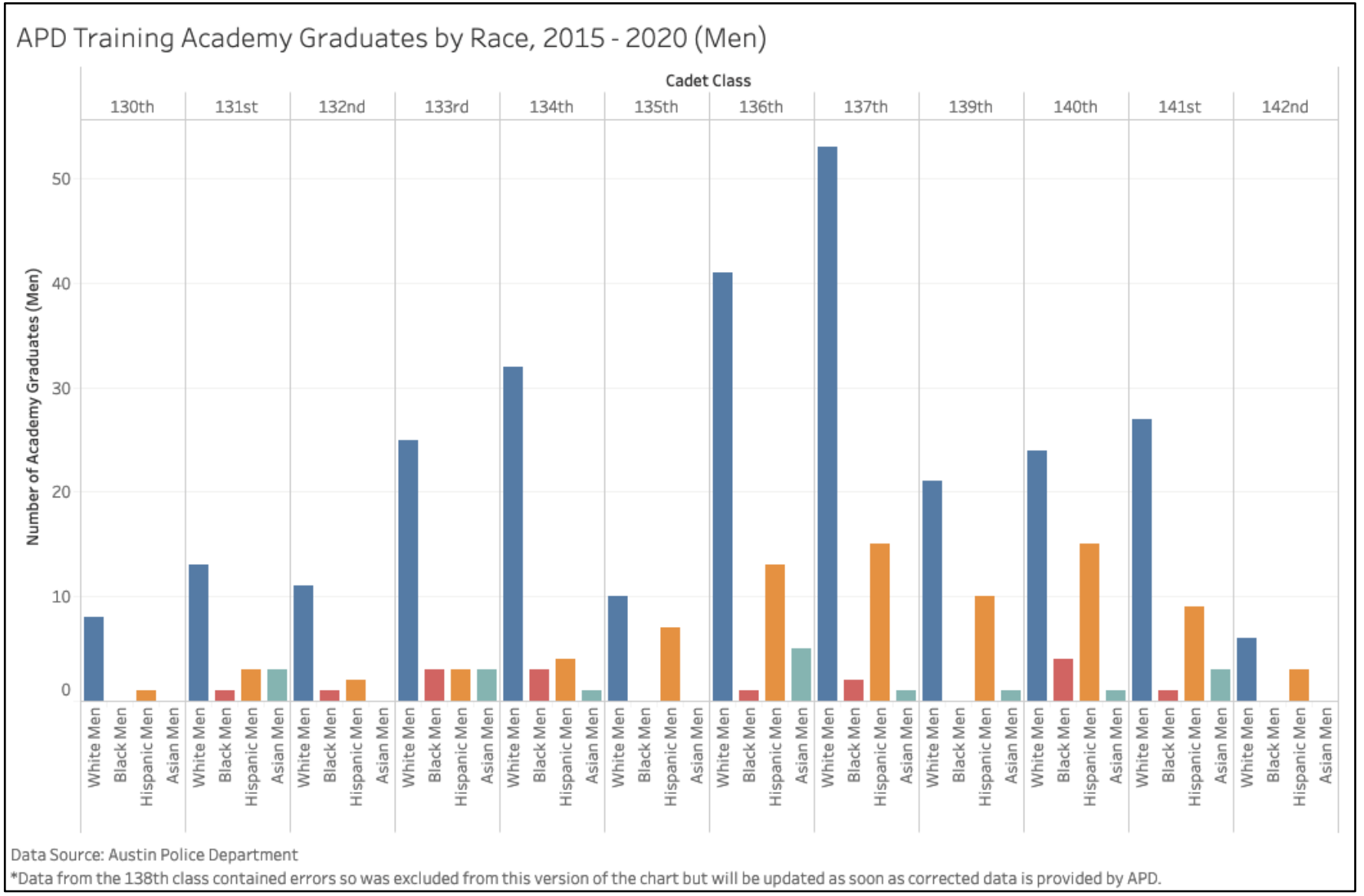
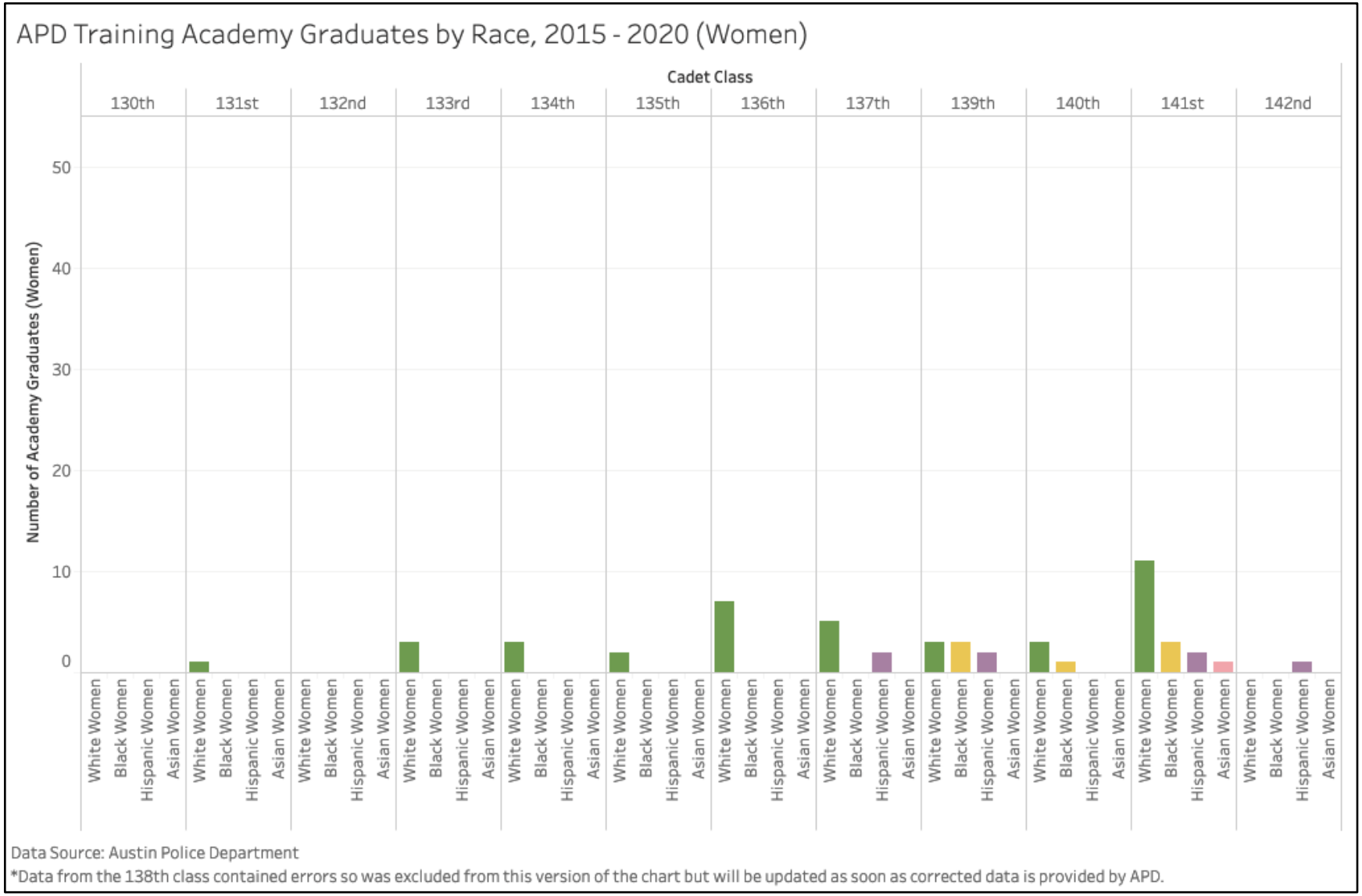


Figure 4. APD Academy Graduates by Race, 2015 - 2020 (Women)



Community Concerns and Response to APD Equity Assessment Results

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During interviews, community members expressed disappointment with the Training division's equity assessment responses. Community members cited many concerns, including the division's general lack of commitment to equity principles, lack of specific goals for improving equitable outcomes and inability to account for underrepresentation of women and communities of color among graduating cadet classes. Community members expressed frustration at de-escalation training materials that included language and images that were insensitive to women and communities of color and inaccurate depictions of the public as increasingly hostile and generally disobedient. Community members expressed overwhelming support for urgent reforms to APD's training standards, as well as department-wide reforms and renewed commitments around equity, diversity, and inclusion.

Lack of Commitment to Equity Principles and Equity Analysis Process

In many interviews with community members who participated in the C+APD meetings, participants expressed frustration at what they perceived as a lack of commitment to equity principles and the equity analysis process in general. Community members perceived APD's training division representatives as defensive when asked questions about race and gender demographics of cadets. Community members perceived the body language, behavior, and responses of training division representatives as defensive as well. These concerns were shared by other APD representatives present at C+APD meetings, who acknowledged in evaluation interviews that some of their APD colleagues were unnecessarily defensive and resistant to community questions about training procedures and materials and equity standards.

Training Materials Create Significant Community Concerns

Community members raised additional concerns at the depiction of an increasingly hostile and aggressive public in APD training materials. Community members expressed concern that this message will only make officers more violent and aggressive when they interact with the community. The APD training curriculum received significant criticism from community members, who expressed outrage at certain segments in APD's de-escalation training videos that were incredibly offensive to Black women.

Qualitative Interview Findings: Dangerous, Inequitable Practices at APD Academy

During interviews conducted as part of this assessment, multiple cadets alleged that the APD training academy fosters a dangerous and ineffective learning environment that discourages, degrades and injures highly qualified candidates, many of whom decide to resign for fear of permanent physical or mental injury. According to multiple former cadets who attended recent academies, cadets are subjected to counterproductive and excessive bouts of physical punishment in the form of "smoking sessions."[7] Multiple former cadets explained in separate, individual interviews that the academy's educational elements and academic presentations are regularly interrupted by unscheduled psychological stress drills, making it difficult to absorb important intellectual material and creating an unstable, stressful academic environment.

Multiple former cadets expressed concerns that training division staff foster a culture of violence, embracing brutality over wisdom throughout the academy experience.[8] Multiple cadets expressed concern about training staff promoting rhetoric that is antagonistic toward individuals

[7] Former cadets described "smoking sessions" as extended physical endurance drills that are separate for planned physical exercises. According to multiple interviews, these sessions are unscheduled and designed purely as punishment for a variety of offenses. Multiple former cadets explained that they often were unsure of the cause of each smoking session, but that training staff indicated that the sessions were the result of some individual or collective error.

[8] The term *culture of violence* describes institutionally imposed conditions that "can be used to justify or legitimize direct or structural violence" (Johan Galtung, "Cultural Violence," *Journal of Peace Research*, August 1990). In multiple interviews, cadets confirmed the narrative that an APD trainer asked a new cadet why they wanted to be a police officer, interrupting the cadet's response by saying "If you tell me you want to help people, I will punch you in the face." Combined with other incidents, including deprivation of water by trainers during physical drills in the summer heat, and other comments from training staff identified during interviews, the qualifications for the use of the term *culture of violence*, including the institutional use and justification of the use of force, appear to have been satisfied.

experiencing homelessness.[9] The academy's training staff employ dangerous training tactics that have been described by cadets with military backgrounds as "worse than anything I went through in [US military training]." Multiple former cadets allege that the academy is driven purely by brutality and that physical aggression is the primary quality that trainers seek when promoting cadets toward graduation. The Training division's practices and culture are driving highly qualified candidates to leave the academy, depriving Austin of the diverse, community-driven police force that City leaders and residents envision.

Amid numerous valid concerns over secretive testing practices, unsafe physical tests that violate APD's own policies, racist and sexist language by instructors, physical abuse by instructors, forced resignations, suspicious injuries, inequitable employment outcomes, and an increasingly toxic training culture driven by a militarized "us versus them" mindset, City and APD leaders should rebuild the training academy and implement sweeping structural reforms to the training division. To honor the City and APD's commitment to a safer Austin for all Austinites, these reforms should include measurable changes to the culture, curriculum, staffing and leadership in APD's Training division.

Evidence Supporting the Redesign of APD Training Academy and Training Division

As part of the ongoing equity assessment mandated by Austin's community leaders, the City Manager and City Council, each division at APD conducted a self-assessment and submitted responses via the City of Austin Equity Assessment Tool. APD's own responses illustrate a training division devoid of equity standards. At the time of the self-assessment, APD's training division reported that one (1) of its 72 employees is Black. 70% of the division's employees were white. Further, the training division's self-assessment did not identify any codified standards for ensuring equitable hiring practices or decision-making processes.

During this ongoing independent evaluation of APD's Training division, the researcher has conducted interviews with many former APD academy cadets. These individuals provided a unique perspective on APD's training methodology and narrated corresponding accounts of

[9] Multiple former cadets in separate, individual interviews confirmed that training staff made negative comments toward individuals experiencing homelessness and told cadets that if they are "having a slow day," they could seek out someone experiencing homelessness as an easy target for various citations.

deeply troubling incidents that deserve a transparent and thorough investigation. These allegations and supporting evidence raise concerns that the APD Training division, operating without civilian oversight, is undermining the stated equity goals of the police department, and trainers in the academy are using violent tactics to target and expel the very candidates that the department desires in its ranks. Recent reports from sources including the Office of Police Oversight and APD's own internal investigator offer even further evidence that there are serious gaps in the department's attempts to address racism and inequity in policing.

The researcher requested APD data through the Equity Office and other City intermediaries on cadet injuries, including the number of injuries sustained during cadet classes, whether those injured cadets resigned or graduated, the type of injury sustained, and the race and gender demographic information for injured candidates. In its own self-assessment, APD's Training division listed race and gender among the demographic data collected on cadets, providing a racial breakdown of current cadet and sworn officer personnel. APD provided the data requested, and an analysis of that information is detailed in a separate section of this report titled "Analysis of APD Data on Training Academy Outcomes."

According to interview respondents, many of the academy's trainers rely overwhelmingly on "violent", "brutal", "traumatizing" practices designed to "manufacture soldiers" rather than produce community-driven law enforcement professionals adept at de-escalation. Trainers place cadets in dangerous, demoralizing, and inhumane exercises with "zero regard for the health and safety of cadets." Multiple cadets stated that they and their colleagues had been screamed at or punished for checking on one another or drinking water during intense physical drills, which last for hours in sweltering summer heat. Multiple cadets confirmed that they were deprived of water during extended physical drills in extreme heat. Data provided by APD confirms that a troubling number of cadets were treated for heat exhaustion and dehydration during the academy. Multiple cadets expressed that even though they hydrated heavily at home, as advised by APD training staff during orientation, it was impossible to avoid dehydration when training staff refused to allow them water during these extended physical drills. Cadets could not identify a plausible real-world scenario during which they would be deprived of access to water in extreme heat for extended periods of time. Multiple cadets expressed that this deprivation was rooted in nothing

more than cruelty and had no basis in the reality faced by police officers. Some narratives, corroborated by multiple respondents, are simply too violent to understand how they were ever allowed to occur, including many cadets being forced to resign or risk serious injury in the face of seemingly endless "hazing" and "abuse." The descriptions provided during interviews of injuries caused by APD trainers are equally disturbing. Allegations of anti-homeless, racist, and sexist remarks and other forms of targeted harassment toward cadets and others should not be ignored and deserve further investigation.

Recommendation: Reform and Rebuild APD Training Academy and Training Division

City and APD leaders should work together with community leaders to reimagine, redesign and rebuild the APD Training Academy and Training Division. APD is simply not graduating diverse cadet classes. Further, interviews conducted as part of this research and recent media coverage point to a pattern of dangerous practices during cadet classes. Multiple interview respondents pointed to *smoking sessions*, which are unscripted, unscheduled physical and psychological stress drills that instructors instigate without notice. According to multiple interviews, these *smoking sessions* are often used as collective punishment for individual violations, though their use is just as frequently unexplainable. Some respondents indicated that Training division staff seemed to enjoy putting cadets through the stress drills, which often go on for hours during the summer heat. Multiple respondents claimed that cadets are refused water during these stress drills, that instructors punish cadets for looking at one another (even if checking the condition of fellow cadets), and that medical staff are not posted close enough to the cadets to assess symptoms of dehydration or heat stroke. Multiple respondents witnessed instructors refuse water and fail to render aid to cadets who were visibly suffering symptoms of dehydration. It is well-documented that these practices resulted in multiple serious injuries to cadets.

Until this culture of violence is no longer the driving force behind APD's training methodology, the department will not be able to deliver on its promises of equitable service provision to the residents of Austin. What benefit is it to eliminate brilliant candidates for the sake of maintaining a battlefield mindset? How much money is spent recruiting these bright, capable, highly-educated, successful and *diverse* candidates, bringing them through a months-long recruiting process, vetting them intensely, dedicating an unknown number of personnel hours to interviews and investigations -- only to have them driven out of the academy by a culture of brutality, militarism and violence? What benefit is it to subject highly-qualified, diverse, committed cadets to training that is more intense than some military training programs? The culture of the APD training academy, detailed firsthand by the courageous respondents who were interviewed for this research, conflicts directly with the department's recruiting and public relations campaigns, which proclaim a police department focused on diversity, equity and community engagement. APD's own data reveals repeated failures at achieving these goals.

Reforms to the training academy and training division should begin after the Equity Office's evaluation of the police department is complete and any subsequent action plans and reforms have been implemented with strong civilian oversight mechanisms. A recent series of equity assessment meetings between community leaders, residents, City officials and APD division representatives provided an uncommon and unorthodox opportunity for residents and APD leaders to engage with, educate, and learn from one another. The City and APD should use this model to reimagine, reform and rebuild APD's training division and training academy.

Departments, divisions, and actors that engage in discrimination and inequitable practices cannot be corrected or reformed simply by changing a script, adding a slideshow on diversity, or publishing a pamphlet with photos of Black employees on each page. Systemic change implies a full redesign and reconstruction of a failed system. Corresponding accounts by multiple cadets from multiple cadet classes indicate that any recent changes to APD's training curriculum have been, at best, superficial and that systemic flaws persist in the department's training protocols. Further interviews with APD division leaders from multiple divisions indicate that the department's commitment to the equity assessment process has been similarly superficial. Most division leaders received little guidance from APD leadership when engaging with the equity assessment. This means that division leaders, rather than department leaders, are conducting their division's equity analysis using disparate, ad hoc approaches. This renders the equity assessment process useless in divisions where leaders are not adequately equipped to address, or simply do not care about, racial or gender equity.

The City of Austin and APD made a commitment to foster a more diverse, equitable, safer Austin for all Austinites. Equity-focused reforms at the police department must be deep, cultural, universal, and backed with measurable indicators, public accountability mechanisms, and most importantly, community input. City and APD leaders should seize this opportunity to recommit to the principles of equity outlined in Council Resolution 66 and begin the important work of reimagining public safety by beginning where Austin's police officers are shaped: APD's training academy and the training division that administers it.

SWOT Analysis: APD Training Division Equity Assessment Responses

STRENGTHS	**WEAKNESSES**
Collects some demographic data on division staff Collects some demographic data on cadet classes	Lack of diversity among division staff Division does not analyze demographic data on contractors/consultants Division does not collect demographic data on racial disparities among client populations Division does not have strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for ensuring equitable practices
OPPORTUNITIES	**THREATS**
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of political will among APD leadership at many levels threatens meaningful change High-profile incidents resulting in civilian harm or death undermine community equity-driven reform efforts and further erode community trust in APD reform commitments Division training materials, including materials used in de-escalation trainings, contribute to culture of fear, mistrust between police officers and community members

Strengths

Collects some demographic data on division staff

Question 4:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response: These data are available through the Human Resources Department.
White (40) 70%
Black (1) 2%
Asian (4) 7%
Latino (12) 21%

2. Collects some demographic data on cadet classes

Question 9:
Provide the numerical breakdown (count) by race/ethnicity of the clients your department serves.

Division Response: HR does not keep race/ethnicity statistics for APD civilian employees other than cadets. The race/ethnic breakdown for sworn and cadets:
TOTAL = 1,901; White - 1,304; Black - 153; Hispanic - 393; Asian - 49; Native American – 2

Weaknesses

Lack of diversity among division staff

Question 4:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response: These data are available through the Human Resources Department.
White (40) 70%
Black (1) 2%
Asian (4) 7%
Latino (12) 21%

Division does not analyze demographic data on contractors/consultants

Question 5: Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response: These data are available through the Purchasing Department.

Does not collect demographic data on racial disparities among client populations

Question 11: Does your department collect data showing racial/ethnic disparities among the population you serve?

Division Response: No.

Division does not have strategies in place to ensure racial and thnic diversity of staff

Question 15: Does your department have strategies in place for ensuring racial/ethnic diversity of staff in recruitment and hiring processes?

Division Response: No.

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Question 20: How does your department measure the effectiveness of its training on equity and institutional racism?

Division Response: N/A

Does not provide any specific or measurable standards for ensuring equitable practices

Question 23: Does your department measure the effectiveness of its efforts to improve racial equity?

Division Response: No.

Opportunities

Development of concrete equity standards and assessment processes

Develop and implement training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaborate with Equity Office and Equity Action Team to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Lack of political will and/or commitment to principles of equity at any level of leadership can undermine the efforts of reformers within the department and partners in government and the community

High-profile incidents resulting in civilian harm or death undermine community equity-driven reform efforts and further erode community trust in APD reform commitments

Division training materials, including materials used in de-escalation trainings, contribute to culture of fear, mistrust between police officers and community members

SWOT Analysis: APD Recruiting Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Collects some demographic data on contractors and consultants Collects some demographic data on cadet classes Conducts some test monitoring during cadet testing to prevent observable biases Hired civilian recruitment coordinator whose tasks include monitoring racial and ethnic distribution of cadets	Incomplete demographic data collection: contractors, consultants Does not collect data on demographic disparities among served population Does not provide specific, measurable processes for ensuring racial/ethnic diversity of staff Does not provide division-specific training, orientation, or onboarding specific to critical race issues Does not provide division-specific equity training, does not collect data or perform assessments on impact of at-large trainings Does not provide any specific or measurable standards for ensuring equitable practices
OPPORTUNITIES	**THREATS**
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of political will among APD leadership at many levels threatens meaningful change Failure to codify equity standards and accountability mechanisms makes it difficult to measure progress over time External pressure from political actors weakens community trust in APD commitment to equity principles

Strengths

1. Collects demographic data on division staff (Q4)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the staff in your department.

Division Response:
The Recruiting Unit currently has 27 employees (up to the rank of Commander). Whites make up 10 employees, African Americans make up 9 employees, and Hispanics make up 8 employees. This can be broken down further into 6 white males, 4 white females, 7 African American males, 2 African American females, 5 Hispanic males, and 3 Hispanic females.

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2. Collects some demographic data on contractors and consultants (Q5)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response:
Stats (actual count): Ethnicity Not Disclosed (89), White (68), Asian (7), Hispanic (4), African American (3), Native American (2). Total 173

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3. Collects demographic data on cadet classes (Q9)

Question:
Provide the numerical breakdown (count) by race/ethnicity of the clients your department serves.

Division Response:
Data for the last two hiring cycles: 140th cycle count: American Indian - 5, Asian - 42, African American - 201, Hispanic - 536, White - 742, Other - 32. 141st cycle count: American Indian - 4, Asian - 34, African American - 91, Hispanic - 287, White - 405, Other - 24

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4. Conducts some test monitoring during cadet testing to prevent observable biases (Q22)

Question:
How does your department ensure departmental policies, practices, and programs do not adversely impact communities of color?

Division Response (excerpt):
During testing cycles, test scores of minority and women applicants are closely monitored to ensure that there is no evidence of adverse impact (4/5th's rule).

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5. Hired civilian recruitment coordinator whose tasks include monitoring racial and ethnic distribution of cadets (Q24)

Question:
Describe the methods of measurement used (e.g., surveys) and provide a few examples of measures you track (e.g., Increase outreach to X community by X%)

Division Response:
The Recruiting Unit is always striving to forward cadet classes to the academy that are reflective of Austin's diverse communities. We recently hired a civilian Recruitment Coordinator. Part of her job duties is to keep stats on the ethnic makeup of classes entering in the academy and look for any changes in the data. If any changes are noted, unit leadership looks into this further to see where we are losing minority applicants during the hiring process.

Weaknesses

1. Inconsistent demographic data collection for contractors and consultants (Q5)

Question: Provide the numerical breakdown (count) by race/ethnicity of the contractors and consultants utilized by your department.

Division Response: Stats (actual count): Ethnicity Not Disclosed (89), White (68), Asian (7), Hispanic (4), African American (3), Native American (2). Total 173

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2. Does not collect data on demographic disparities among served population (Q11, Q12)

Question: Does your department collect data showing racial/ethnic disparities among the population you serve?

Division Response: No, the Recruiting Unit does not.

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3. Does not provide specific, measurable process for ensuring racial/ethnic staff diversity (Q16)

Question: Provide those strategies, and if applicable, include the venues and organizations where outreach occurs.

Division Response: The Recruiting Unit is always striving to maintain a diverse workforce that reflects the ethnic make-up of APD as well as the citizens of Austin. As evidenced above, the unit is very diverse (almost 1/3 representation per ethnic group). All departmental officers, to include African American, Asian, and Hispanic officers, are encouraged to work with the unit on special assignments to learn about the inner workings of the unit and to participate in Phase 1 testing with the hope they will apply to the unit when a vacancy announcement is posted. Having a diverse workforce in the Recruiting Unit is very important as we work to increase the diversity within APD.

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4. Does not provide training, orientation, or onboarding specific to critical race issues (Q18)

Question: Does your department, on-board, orient, or train staff on critical issues related to equity and institutional racism?

Division Response: The Recruiting unit does not as a unit, but the department does offer various trainings on the topic through TCOLE mandated classes.

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5. Does not provide division-specific equity training, does not collect data or perform assessments on impact of trainings (Q20)

Question:
How does your department measure the effectiveness of its trainings on equity and institutional racism?

Division Response:
N/A

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6. Does not provide any specific or measurable standards for ensuring equitable practices (Q21)

Question: What are your department's greatest equity priorities? If they have not yet been formally established, take time now to think about and identify what equity priorities are most important to your department and include them here.

Division Response: The Recruiting unit strives to ensure that everyone who applies to be a police officer is treated fairly, professionally, impartially, and we are transparent with them throughout the hiring process. Members of the unit ensure that everyone who walks through our front door is treated the same. We are pulling for the applicants throughout the process and want everyone to succeed, as we need more officers on the streets to enhance community policing efforts.

Opportunities

1. Develop concrete equity standards and assessment processes.

2. Develop and implement training modules on critical race issues as part of recruiting, training, orientation and onboarding processes.

3. Collaborate with Equity Office and Equity Action Team to develop and implement specific accountability metrics for ensuring equitable practices.

Threats

1. Lack of political will and/or commitment to principles of equity at any level of leadership can undermine the efforts of reformers within the department and partners in government and the community.

2. Failure to codify equity standards and accountability mechanisms can make it difficult for internal and external evaluators to measure progress over time.

3. External pressure from political actors may threaten equity-driven initiatives and erode community trust in APD commitment to equity principles.

Community Response: Recruiting Division Equity Assessment Responses

The equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher. During interviews, community members expressed concerns over the Recruiting division's equity assessment responses. Community members cited a series of concerns, including the division's general lack of codified equity principles and lack of specific goals for improving equitable outcomes. Community members expressed overwhelming support for urgent reforms to APD's recruiting standards, as well as department-wide reforms and renewed commitments around equity, diversity and inclusion.

Conclusion, Context, and Insights

This report analyzes the responses provided by APD's Training and Recruiting Divisions to the City of Austin's Equity Assessment Tool and supporting evidence to evaluate each division's commitment to principles of equity. APD's Training Division does substantially less than most Austin divisions to advance the principles of equity. In fact, it is hard to identify any meaningful, measurable commitments to equitable outcomes when assessing the division's responses. The division's staff is not diverse and there are no specific or measurable standards for ensuring equitable practices in day-to-day operations. The academy continues to graduate cadet classes that do not reflect the communities most heavily policed by APD. Graduation rates for Black candidates are consistently lower than those of their white counterparts. Every racial group in Austin is underrepresented in APD's graduating cadet classes, except for white cadets, who are overrepresented when compared to the city's demographic makeup.

The lack of equity standards in the APD training division raises serious concerns that must be addressed by Austin city leaders, in consultations with community leaders, before commencing any new cadet classes. This is especially true considering the events that have unfolded in Austin this year, from the death of Mike Ramos to ongoing protests.

It is impossible to deliver this report without reflecting on the events taking place right now in cities across the United States, including Austin, in response to ongoing, systemic inequities and violence against Black, brown and poor communities by police forces; violations of international human rights standards by police forces; and the rapid militarization of local police forces. It is also essential that all parties reflect on the escalating police and military response to those demonstrations. Our communities, their governments, and their police agencies are at an important, historic decision point.

How can a community place trust in the commitments of APD leaders to *de-escalatory, anti-racist* training policies when its riot control officers are shooting unarmed Black demonstrators in the face at short range with rubber bullets and launching CS gas into crowds that include children and pregnant women? How does the community trust the commitment of police leadership to *de-escalatory, anti-racist* training policies when another unarmed Black man is

fatally shot by its officers in broad daylight in front of an exhausted community? How can community members build trust with police leaders who choose to leave as a unit during lunch at anti-racism workshops rather than break bread with the community members who have given their time freely to do the tremendous work of undoing systemic racism? Why does APD continually fail to graduate diverse cadet classes? These crucial questions arose from the community during interviews and conversations throughout this evaluation. Their honest criticisms provide critical citizen perspectives and a starting point for city leaders committed to building a more just and equitable Austin.

Appendix 1: APD Injury Data

Figure 5. APD Training Academy Injuries, 2015 - 2020

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	0
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	0
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	0
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	0
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	1
TOTALS:	**90**	**123**	**77**	**116**	**98**	**5**

Source: APD Data provided to the researcher by request

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Austin Police Department, Data Planning Division

Research and analysis provided by the Peace Mill

December 28, 2020



Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
4	**Community Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Develop and Implement Departmental Strategies and Requirements for Ensuring Equitable Outcomes in Hiring, Project Management, and Data Provision**
5	**SWOT Analysis: APD Data Planning Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with city departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Data Planning division has very few, if any, strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's knowledge of the principles of diversity, equity and inclusion. When asked about strategies for ensuring racial equity during the recruiting and hiring process, division leadership responded, "I'd prefer to hire diversity of thinking versus diversity of race," as if the two concepts are mutually exclusive. Division leadership did not provide specific, measurable practices or strategies related to equitable hiring practices. When asked to consider the relationship between the racial makeup of divisional staff and the community served by its work, division leadership responded, "I haven't thought about it to be honest. We do make efforts to have diverse hiring panels." While this intention is helpful and signals a willingness to learn, the division's responses indicate a general absence of specific strategies for ensuring equity in recruitment, hiring processes, community engagement, and other important areas.

The Data Planning division lacks specific strategies for ensuring equitable access to the data that it produces. While the division points to a large number of datasets offered through the City's Open Data Portal, the division's responses to the equity assessment tool indicate an absence of strategies for ensuring that data is accessible and understandable by Austin's residents. When asked about ensuring accessibility and understanding of its data, division leadership responded, "We don't have a process for determining reading level. All of our public facing documents are placed on either APD's public site or the City of Austin's Open Data Portal—I guess we assume since they can get to that, they have the ability to download, read, and consume our documents and datasets." This is precisely the type of assumption that inhibits widespread access and understanding of internal data. Government data is often written in language that is generally inaccessible to individuals without advanced knowledge of complex data, government jargon, and government processes. Division leadership goes on to say, "The number and complexity of our research projects, reports, and datasets has increased steadily over the past three years." This appears to be an admission of the complexity of the very data in question. The APD datasets available through the Open Data Portal contain variables and categories that are often undefined, and when asked during a meeting about a codebook for understanding the variable codings, which is not provided alongside the dataset online, division leadership provided a business card and instructed the researcher to send a request for the codebook directly through email. How is the average resident supposed to know the process for finding such a codebook? This lack of structured accessibility protocol inhibits residents from accessing and understanding the data provided by the division through the open data portal and would fail even the most basic test of transparency. Similarly, when addressing translation of data and reports into languages other

than English, the division fails to provide any evidence of active equity-driven strategies or protocols.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During qualitative interviews, community members expressed two primary concerns related to the Data Planning division: access to information and lack of translation. Community members expressed that they were unable to understand the process by which the division selects data for publication and unfamiliar with the process for accessing data on policing. For community members, APD data is difficult to understand, includes unexplained variables, and is written in the internal language of the Police Department, rather than language that is familiar to residents. Community members that participated in interviews believe that the division should make a stronger attempt to make data more accessible to individuals who are not well-versed in the language of the police department. Community members who participated in interviews also expressed frustration that APD data is not readily available in languages other than English. Community members correctly pointed out that negative outcomes related to policing are suffered disproportionately by communities of color, which includes immigrant communities. Community members expressed frustration that individuals whose primary language is not English seem overlooked by division leaders.

Recommendation: Develop and Implement Departmental Strategies and Requirements for Ensuring Equitable Outcomes in Hiring, Project Management, and Data Provision

APD's Data Planning division lacks clear and measurable strategies and protocols for achieving equitable outcomes. From hiring to data provision to community engagement, division leadership was unable to provide much evidence for a culture of diversity, equity and inclusion within the division. According to responses to the equity assessment tool, division leadership seems to rely on personal perceptions of diversity, rather than measurable, informed approaches to implementing equity standards. Division leadership should collaborate with the Equity Office

to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues.

SWOT Analysis: APD Data Planning Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Compiles data (including demographic data) on officer-involved shootings, traffic stops and other incidents that can be used for analysis by researchers, community organizations and members of the public Identifies the importance of improving gender-based data in self-assessment, although division systems at the time of self-assessment only recognized binary gender identity options (male/female) Attends and provides information at some community engagement events focused on equity-related issues	Lack of diversity among division staff Division does not provide demographic data on contractors/consultants or analysis of demographic data on contractors/consultants Division does not provide demographic data on racial disparities among client populations Division does not provide specific or measurable evidence of strategies to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for strengthening or ensuring equitable practices Does not provide evidence of efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Does not provide translation of public documents, datasets, or other information into languages other than English Does not collect client satisfaction data (including demographic data) Does not provide evidence of efforts to engage specifically with marginalized communities

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Lack of institutional and individual understanding among division leadership with regard to principles of diversity, equity and inclusion Lack of coherent plan or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion External pressure from political actors weakens community trust in APD commitment to equity principles

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Compiles data (including demographic data) on officer-involved shootings, traffic stops and other incidents that can be used for analysis by researchers, community organizations and members of the public

Identifies the importance of improving gender-based data in self-assessment, although division systems at the time of self-assessment only recognized binary gender identity options (male/female)

Attends and provides information at some community engagement events focused on equity-related issues

Weaknesses

Lack of diversity among division staff

Division does not provide demographic data on contractors/consultants or analysis of demographic data on contractors/consultants

Division does not provide demographic data on racial disparities among client populations

Division does not provide specific or measurable evidence of strategies to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide any specific or measurable standards for strengthening or ensuring equitable practices

Does not provide evidence of efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Does not provide translation of public documents, datasets, or other information into languages other than English

Does not collect client satisfaction data (including demographic data)

Does not provide evidence of efforts to engage specifically with marginalized communities

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Lack of institutional and individual understanding among division leadership with regard to principles of diversity, equity and inclusion

Lack of coherent plan or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion

External pressure from political actors weakens community trust in APD commitment to equity principles

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Austin Police Department
Internal Affairs and Professional Standards Division

Research and analysis provided by the Peace Mill

December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Community and Staff Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Internal Affairs and Professional Standards Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with city departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable steps toward implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Internal Affairs and Professional Standards division has few strategies and protocols in place to ensure racial equity. From hiring to community engagement, the division's responses to the equity assessment tool highlight a significant deficiency in the division leadership's ability to implement principles of diversity, equity and inclusion. Unlike other divisions, Internal Affairs and Professional Standards sources its staff from active APD employees, specifically sworn officers. This system of staffing limits leadership's ability to access a diverse candidate pool and binds the division to the outcomes of APD's Recruiting and Training Divisions. If the Training Division, which fails tremendously to implement the principles of equity, does not graduate diverse classes from its academy, Internal Affairs is, by extension, prohibited from accessing a diverse candidate pool. Perhaps more than any other example, this highlights the need for deep and systemic changes at APD.

Division leadership seems aware of the importance of diversity, equity and inclusion, but responses to the equity assessment verify that this awareness is not supported by systemic measures that ensure equitable outcomes. Division leadership points repeatedly to its relationship with the Office of Police Oversight, which should be supported and strengthened. Without internal processes and systemic changes, the partnership between IA and the OPO alone cannot fully address the division's inability to institutionalize the principles of diversity, equity and inclusion.

Community and Staff Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During qualitative interviews with community members, respondents expressed concern at the staffing system employed by Internal Affairs and Professional Standards. Similar concerns were expressed by an APD division leader interviewed as part of this evaluation. Respondents are concerned that the practice of rotating officers in and out of Internal Affairs incentivizes officers to "go easy" on their counterparts under investigation, either out of a sense of loyalty or a fear of retaliation. APD staff who expressed concerns over this issue identified the paramilitary nature

of the police department as promoting a culture of loyalty over principle. If officers are incentivized, or intimidated, to embrace loyalty, the department's stated commitment to creating more equitable outcomes will likely fail. Organizations that state commitments to equitable outcomes must prioritize those principles and implement organizational changes that prioritize those commitments and protect their underlying principles.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Internal Affairs and Professional Standards division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division does not have clear strategies that foster a diverse and inclusive environment. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing a long-term action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Internal Affairs and Professional Standards division can begin to address its shortcomings and take measurable steps toward building a culture of diversity, equity and inclusion within its ranks.

SWOT Analysis: APD Internal Affairs and Professional Standards Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Collects and provides demographic data on contractors/consultants Division consults with the Office of Police Oversight to provide public documents and data on complaints Consults with Office of Police Oversight to provide translation of some public documents into Spanish Participated in community forums with Office of Police Oversight	Staff diversity does not reflect Austin's racial makeup (64% of employees are white; fewer than 50% of Austin residents are white) Division does not collect data on racial disparities among client populations Division does not have strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings Does not provide any specific or measurable standards for strengthening or ensuring equitable practices related to community engagement Does not provide evidence of strategies to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Does not provide evidence of institutional strategies to ensure access, translation and readability of public documents Division does not provide evidence of direct efforts to engage specifically with marginalized communities Due to overall lack of diversity at APD, division struggles to diversify staffing

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	Failure of APD to recruit, train and graduate diverse cadet classes (prevents division from diversifying staff) Lack of clear strategies or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion External pressure from political actors weakens community trust in APD commitment to equity principles Structure and staffing model of division may impede fair and equitable investigations

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Collects and provides demographic data on contractors/consultants

Division consults with the Office of Police Oversight to provide public documents and data on complaints

Consults with Office of Police Oversight to provide translation of some public documents into Spanish

Participated in community forums with Office of Police Oversight

Weaknesses

Staff diversity does not reflect Austin's racial makeup (64% of employees are white; fewer than 50% of Austin residents are white)

Division does not collect data on racial disparities among client populations

Division does have strategies in place to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings

Does not provide any specific or measurable standards for strengthening or ensuring equitable practices related to community engagement

Does not provide evidence of strategies to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Does not provide evidence of institutional strategies to ensure access, translation and readability of public documents

Division does not provide evidence of direct efforts to engage specifically with marginalized communities

Due to overall lack of diversity at APD, division struggles to diversify staffing

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

Failure of APD to recruit, train and graduate diverse cadet classes (prevents division from diversifying staff)

Lack of clear strategies or evidence of division's commitment to institutionalizing principles of diversity, equity and inclusion

External pressure from political actors weakens community trust in APD commitment to equity principles

Structure and staffing model of division may impede fair and equitable investigations, as IA officers are incentivized to protect one another, avoid retaliation by "going easy"

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

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Community + APD Equity Assessment Series:
Austin Police Department, Finance Division

Research and analysis provided by the Peace Mill

December 28, 2020



Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Responses to APD Equity Assessment Results**
3	**Community Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Finance Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

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[1] Austin City Council Resolution 20150507-027

Analysis of Division Responses to APD Equity Assessment Results

APD's Finance division has a diverse staff and its leadership provides thoughtful, intentional responses to the equity assessment process. Division leadership clearly identifies problems with institutional policies that prevent the police department from pursuing systemic racial equity. Like many other divisions, Finance does not receive institutional support to strengthen equitable outcomes. While the division is one of the few in its equity assessment cohort with a staff that generally reflects the racial demographics of Austin, this makes the division an outlier. The racial equity achieved within the division's staff is not reflective of any broad culture of diversity, equity, and inclusion. Rather, this parity is achieved because division leaders are aware of, and at least committed to addressing, the need for strong equity standards within the department.

The Finance division shares many of the shortcomings of its equity assessment cohort. Finance does not have specific, measurable strategies in place for ensuring equitable hiring or contracting practices. The division does not have a process in place for ensuring the prevention of adverse effects of their programming on marginalized communities. The division also lacks clear community engagement strategies, standards or measures for improving racial equity, strategies for measuring racial disparities among its clients.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

During community interviews, respondents' primary concern addressed accessibility and readability of finance data. Community respondents were interested in understanding how APD spends taxpayer dollars, but finance documents are typically written for internal purposes, which can create barriers for those unfamiliar with APD's institutional language. Respondents indicated a need for more accessible documents and reports, written at a reading level that is accessible to larger sections of the general population. This need is reflected in the division's own self-assessment. Division leaders seem to be aware of the need for more accessible information and committed to achieving this goal. Community respondents were also concerned about the general lack of translation, as most APD data is only available in English, including finance data.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Finance division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of clear strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division does not have clear strategies to foster a culture of diversity, equity inclusion. The division's notable efforts to address some equity concerns is an encouraging sign, but those measures must be strengthened and codified. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing a long-term action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Finance division can build on its first steps toward building a culture of diversity, equity and inclusion within the division and influence major changes throughout APD.

SWOT Analysis: APD Finance Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Division staff diversity reflects diversity of Austin's residents Division provides demographic data on contractors/consultants Openly addresses institutional policies that inhibit equitable outcomes (allowing contractors to opt out of providing staff demographic data) Provides thoughtful responses when asked to propose ideas for strengthening racial and gender equity within division, externalizes to APD as a whole Attends and provides information at some community engagement events focused on equity-related issues Identifies some division programming that make a targeted effort to provide programming in languages other than English Recently completed assessment of reading level of divisional documents, developing plan to increase access/readability	Division does not collect data on racial disparities among client populations Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings Does not provide specific, measurable strategies / indicators for ensuring equitable outcomes in hiring, contracting Does not provide measurable evidence of division-specific efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of division-specific efforts to improve racial equity (including budget) Does not collect client satisfaction data (including demographic data) Does not collect community engagement data that allows for equity analysis

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Division staff diversity reflects diversity of Austin's residents

Division provides demographic data on contractors/consultants

Openly addresses institutional policies that inhibit equitable outcomes (allowing contractors to opt out of providing staff demographic data)

Provides thoughtful responses when asked to propose ideas for strengthening racial and gender equity within division, externalizes to APD as a whole

Attends and provides information at some community engagement events focused on equity-related issues

Identifies some division programming that make a targeted effort to provide programming in languages other than English

Recently completed assessment of reading level of divisional documents, developing plan to increase access/readability

Weaknesses

Division does not collect data on racial disparities among client populations

Does not provide division-specific equity training / does not collect data or perform assessments on impact of equity trainings

Does not provide specific, measurable strategies / indicators for ensuring equitable outcomes in hiring, contracting

Does not provide measurable evidence of division-specific efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of division-specific efforts to improve racial equity (including budget)

Does not collect client satisfaction data (including demographic data)

Does not collect community engagement data that allows for equity analysis

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

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Community + APD Equity Assessment Series:
Austin Police Department, Human Resources Division

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December 28, 2020

THE PEACE MILL
RESEARCH AND COMMUNICATIONS

Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Human Resources Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to provide "leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess City departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Human Resources division has a diverse staff and its leadership provides thoughtful, intentional responses to the equity assessment process. Division leadership clearly identifies problems with institutional policies that prevent the police department from pursuing systemic racial equity. Like many other divisions, Human Resources does not receive institutional support to strengthen equitable outcomes. While the division is one of the few in its equity assessment cohort with a staff that generally reflects the racial demographics of Austin, this makes the division an outlier. The racial equity achieved within the division's staff is not reflective of any broad culture of diversity, equity, and inclusion. Rather, this parity is achieved because division leaders are aware of, and at least committed to addressing, the need for strong equity standards within the department.

The division's responses to the equity assessment tool identify a series of opportunities for developing and implementing strategies for improving equitable outcomes. Like many APD divisions, Human Resources lacks division-mandated training on diversity, equity, and inclusion. Available trainings are voluntary. The division does have systems in place for assessing negative impacts of its policies and programs on marginalized communities, especially communities of color. While Human Resources collects impressive amounts of data and provides them in clear and understandable formats in response to the equity analysis tool, the division does not have a clear community engagement strategy, which can leave community stakeholders out of its decision making process and adversely affect communities of color and other marginalized communities.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Human Resources division's self-assessment, coupled with evidence gathered during qualitative interviews, confirms the absence of institutional strategies for ensuring equitable practices and outcomes. Division leadership's responses to the equity assessment confirm that the division is committed to the *ideas* of diversity, equity, and inclusion, but this is only one step of many. The division's notable effort to address some equity concerns is an encouraging sign, but those measures must be strengthened and codified. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, reporting, and other critical issues. By developing and implementing a long-term, equity-focused action plan that incorporates the division's strengths, addresses weaknesses, and takes note of opportunities and threats identified in this report, the Human Resources division

can build on its first steps toward building a culture of diversity, equity and inclusion within the division and influence major changes throughout APD.

SWOT Analysis: APD Human Resources Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Division collects and provides demographic data on division staff Division collects and provides demographic data on contractors/consultants Division staff diversity reflects diversity of Austin's residents Division provides strategies for strengthening equitable outcomes in hiring processes Division provides propositions for strengthening equitable outcomes for staff Division provides some translation of public documents, datasets, or other information into languages other than English	Division does not collect demographic data on racial disparities among client populations Division does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide specific strategies or evidence of proactive efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Division does not currently collaborate with other city departments to advance racial equity in Austin Does not provide evidence of efforts to engage specifically with marginalized communities in budgeting process Participation in diversity, equity and inclusion trainings are voluntary for division staff

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of mandatory training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Division collects and provides demographic data on division staff

Division collects and provides demographic data on contractors/consultants

Division staff diversity reflects diversity of Austin's residents

Division provides strategies for strengthening equitable outcomes in hiring processes

Division provides propositions for strengthening equitable outcomes for staff

Division provides some translation of public documents, datasets, or other information into languages other than English

Weaknesses

Division does not collect demographic data on racial disparities among client populations

Division does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide specific strategies or evidence of proactive efforts to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Division does not currently collaborate with other city departments to advance racial equity in Austin

Does not provide evidence of efforts to engage specifically with marginalized communities in budgeting process

Participation in diversity, equity and inclusion trainings are voluntary for division staff

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of mandatory training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

About the Researcher

Raymond W. Weyandt is a public policy researcher and graduate student at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin (UT). He currently serves as research program manager for Innovations for Peace and Development, an international development research lab at UT. Raymond also leads IPD's Reimagining Safety and Security team. His research focuses on policing/public safety, national security, migration, open government, equity and human rights. In 2018, Raymond conducted the inaugural assessment of the City of Austin's Open Government Partnership (OGP) commitments on behalf of OGP's Independent Reporting Mechanism. He is the co-author of a forthcoming chapter on open government strategies for local governments and recently co-authored a comprehensive report on Mexico's migratory policies for Beyond the Border, a research project directed by the Robert S. Strauss Center for International Security and Law's Central America and Mexico Policy Initiative. In 2017, Raymond founded the Peace Mill, which provides research and communications support to local nonprofits and other organizations. He currently serves as the Peace Mill's research director.

Community + APD Equity Assessment Series:
Austin Police Department, Victims Services Division

Research and analysis provided by the Peace Mill

December 28, 2020



Table of Contents

2	**Background: Equity Office and Equity Assessment Tool**
3	**Analysis of Division Response to APD Equity Assessment Results**
3	**Community Perspectives on Division Responses to Equity Assessment Process**
4	**Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division**
5	**SWOT Analysis: APD Victims Services Division Equity Assessment Responses**
9	**Research Methods**
9	**About the Researcher**

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

In 2016, the City of Austin formally created the Equity Office, to "provide leadership, guidance, and insight on equity" and "to build and sustain a culture of equity across the city." Under the guidance of the Chief Equity Officer, the EAT and Equity Office staff developed and launched the City of Austin's Equity Assessment Tool. This tool uses quantitative and qualitative methods to assess city departments and projects to ensure equitable outcomes for all of Austin's residents. Equity Office staff work with City departments to complete the tool, which includes questions about departmental demographics, hiring practices, strategies for equitable decision making and a series of other equity measures. Upon completion of this first step, departmental responses are sent to the Equity Office's partner organizations, the Center for Place-Based Initiatives, which conducts a Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis. Equity Office staff then collaborate with departmental staff to develop and implement an equity action plan. Each equity action plan is specific to the department participating in the assessment.

In 2017 and early 2018, the Equity Office piloted the Equity Assessment Tool with a small, voluntary cohort of departments: Austin Public Health, Austin Public Library, Parks and Recreation, Austin Water, Human Resources, Economic Development, Public Works, and Austin Transportation. This pilot program garnered international acclaim from the Open Government Partnership (OGP), an international organization that promotes transparency, civic participation, accountability, and good governance. In its 2018 assessment of the City of Austin's OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

[1] Austin City Council Resolution 20150507-027

Analysis of Division Response to APD Equity Assessment Results

APD's Victims Services division performs a critical role and engages with thousands of Austin residents who are predominantly persons of color. With limited resources, the division makes a strong effort to communicate with its clients in multiple languages. Its staff is more diverse than some of its equity assessment cohort divisions, though staffing demographics do not fully reflect the demographic makeup of the division's clients in the community. The division does not have firm strategies in place to ensure a diverse staff or equitable hiring processes.

Like many APD divisions, Victims Services does not mandate division-specific training on diversity, equity and inclusion. Staff do voluntarily attend a wider variety of equity-driven training, mostly through UT's School of Social Work. However, the lack of mandated equity training reflects the wider trend at APD, with most divisions in this equity assessment cohort using ad hoc practices and relying on individual voluntary engagement with these critical learning opportunities.

Community Perspectives on Division Responses to Equity Assessment Process

The ongoing equity assessment of APD incorporates a unique community feedback mechanism in the form of a series of direct dialogues between APD representatives and community members. The series of meetings is informally known as Community + APD, or C+APD. The C+APD meetings provide an opportunity for community members to review APD responses to the Equity Assessment Tool, ask clarifying questions, request data and other information, and otherwise offer direct community input. Many C+APD participants, including APD staff, officers, community leaders and residents participated in semi-structured, qualitative interviews with an independent researcher.

Community respondents who participated in qualitative interviews focused primarily on Victims Services' need for expanded translation capabilities. Respondents highlighted the broad diversity of languages spoken by victims of crimes in Austin. Respondents also highlighted the disparate impact that crime has on non-English speaking communities, including refugee and immigrant communities. Community members pointed to these disparities as evidence that APD must prioritize translation services as a high priority in any strategies for improving equitable outcomes created by its community programming. This concern reflects the responses of the division's leadership, highlighting widespread agreement that translation and equitable access must drive decisions and not continue to exist as an institutional afterthought.

Recommendation: Collaborate with Equity Office to Develop and Implement a Long Term Action Plan for Ensuring Equitable Practices and Outcomes within Division

Evidence from the Victims Services division's self-assessment, coupled with evidence gathered during qualitative interviews, highlights a unique need to prioritize translation services, access to information, and innovating community engagement strategies. The division's leadership expresses a desire to strengthen diversity among its staff and equity in the services it provides to clients, but like many divisions, Victims Services lacks clear strategies for ensuring equitable practices and outcomes. Division leadership should collaborate with the Equity Office to develop and implement rigorous, measurable, community-informed equity standards that address hiring, community engagement, data accessibility, translation services, and other critical issues. By building on the knowledge of equity possessed by many of the division's staff, which includes many social workers, Victims Services can help the department build and sustain a culture of diversity, equity and inclusion that will have positive external effects for other divisions, community clients, and the City of Austin writ large.

SWOT Analysis: APD Victims Services Division Equity Assessment Responses

STRENGTHS	WEAKNESSES
Collects demographic data on division staff Division collects and provides demographic data on contractors/consultants Division collects some demographic data on clients served Division consults with Department of Public Health in equity-based discussions Attends and provides information at some community engagement events focused on equity-related issues Provides some resources to clients in languages other than English, recognizes importance of expanding translation to meet needs of diverse client base Engages in some community engagement events, provides Spanish translation at events	Division staff diversity loosely reflects Austin demographics but does not reflect the demographics of client communities, which are predominantly communities of color Division does not collect demographic data on racial disparities among client populations Division does not have specific or measurable strategies in place to ensure racial and ethnic diversity of staff Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings Does not provide any current specific or measurable standards for strengthening or ensuring equitable practices (leadership expresses interest in making changes) Division does not currently assess reading level of written materials, other information Division does not have specific or measurable strategies in place to prevent adverse effects of departmental policies, practices, and programs toward communities of color Does not measure the effectiveness of efforts to improve racial equity (including budget) Division does not collect client (community members, crime victims) satisfaction data

OPPORTUNITIES	THREATS
Development of concrete equity standards and assessment processes Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices	External pressure from political actors weakens community trust in APD commitment to equity principles Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership Lack of institutional commitment to adequate translation services at APD threatens division's specific and tremendous need to communicate in many languages other than English

Figure 1. SWOT Analysis of Community + APD Equity Assessment Process

Strengths

Collects demographic data on division staff

Division collects and provides demographic data on contractors/consultants

Division collects some demographic data on clients served

Division consults with Department of Public Health in equity-based discussions

Attends and provides information at some community engagement events focused on equity-related issues

Provides some resources to clients in languages other than English, recognizes importance of expanding translation to meet needs of diverse client base

Engages in some community engagement events, provides Spanish translation at events

Weaknesses

Division staff diversity loosely reflects Austin demographics but does not reflect the demographics of client communities, which are predominantly communities of color

Division does not collect demographic data on racial disparities among client populations

Division does not have specific or measurable strategies in place to ensure racial and ethnic diversity of staff

Does not provide division-specific equity training, does not collect data or perform assessments on impact of equity trainings

Does not provide any current specific or measurable standards for strengthening or ensuring equitable practices (leadership expresses interest in making changes)

Division does not currently assess reading level of written materials, other information

Division does not have specific or measurable strategies in place to prevent adverse effects of departmental policies, practices, and programs toward communities of color

Does not measure the effectiveness of efforts to improve racial equity (including budget)

Division does not collect client (community members, crime victims) satisfaction data

Opportunities

Development of concrete equity standards and assessment processes

Development and implementation of training modules on critical race issues as part of recruiting, training, orientation and onboarding processes

Collaboration with Equity Office and community to develop and implement specific accountability metrics for ensuring equitable practices

Threats

External pressure from political actors weakens community trust in APD commitment to equity principles

Lack of high-level institutional commitment at APD to measurable equity standards threatens to undermine political will of current divisional leadership

Lack of institutional commitment to adequate translation services at APD threatens division's specific and tremendous need to communicate in many languages other than English

Research Methods

To ensure transparency and accountability, the Equity Office contracted a third party independent researcher to analyze responses submitted by each APD division during the equity assessment process. The researcher used these responses, desk research, and interviews to produce a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, supporting analysis, and policy recommendations for each division. The goal of this research and purpose of this report is to provide reliable, third-party analysis that contributes to healthier, more equitable local governance.

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Community + APD Equity Assessment Series:
Community Engagement Process Evaluation and Recommendations

Research and analysis provided by the Peace Mill

December 28, 2020



Table of Contents

List of Acronyms	3
Summary	4
Background: Equity Office and Equity Assessment Tool	7
Community + APD Meeting Series: Background	8
Community + APD Meeting Series - Overview and Structure	8
Purpose of Report and Research Methods	11
Results Summary	12
SWOT Analysis	13
Recommendations	15
Conclusion, Context, and Insights	18
About the Researcher	19

Acronyms

APD: Austin Police Department

C+APD: Community + APD (the informal name of the meetings between community and APD)

COA: City of Austin

EAT: Equity Action Team

SWOT: Strengths, Weaknesses, Opportunities and Threats, a type of analysis framework

Summary

This report assesses the pilot phase of the Community + APD initiative, a series of meetings organized and facilitated by the City of Austin Equity Office as part of its equity assessment of the Austin Police Department. In 2019, the City of Austin's Equity Office engaged the Austin Police Department in an uncommon strategy to address systemic inequities in policing. As local governments across the country struggled to address growing tensions between underserved, overpoliced communities and city police departments, the Equity Office invited the Austin Police Department and collection of community members to a series of important dialogues on equity and policing. This report assesses the strengths and weaknesses of the Community + APD initiative and provides a series of recommendations for improving future meeting series.

As part of the City's equity assessment process, APD staff and officers, community leaders, and Austin residents gathered together for a series of dialogues, during which community members could engage directly with APD representatives. The discussions centered around each division's responses to the Equity Assessment Tool and were designed to add a level of community accountability to the equity assessment process. While some community participants were associated with the Equity Action Team, others in attendance were unaffiliated residents.

Over the course of many weeks, community members and APD staff and officers engaged in direct, facilitated conversations on hiring practices, victim service provision, data collection, use of force training, and a host of other issues related to equity and policing in Austin. At each meeting, participants sat together over a locally prepared meal, co-created ground rules for the discussions, and proceeded through approximately two hours of facilitated discussion. Community members led the discussions by asking questions related to each division's Equity Assessment Tool responses. APD division representatives, including sworn and civilian staff, responded to community members' questions in two main formats:

- Rotating small group discussions:
    - Divisions sit at separate tables with 3-5 community members

  - Community members ask questions, division representatives respond, dialogue
  - After an allotted time, community members rotate to new division tables
  - Professional facilitator manages process, engages groups at random

- Static large group discussion:
  - Questions are sourced one at a time from assembled community members
  - APD responds to questions one at a time, dialogues with community members
  - Professional facilitator manages process, allocating specific times for APD responses and community followup questions

The report that informed this report includes several measures designed to assess the strengths and weaknesses of the pilot series of Community + APD meetings. To produce this report, the Equity Office engaged a local, third-party researcher to assess the pilot program and make recommendations for improving the process. This research included observation of Community + APD discussions, desk research (project documents, feedback forms and related reports), and a series of in-person, qualitative interviews. Interview respondents included APD staff and officers, community leaders, independent residents, and Equity Office staff.

Respondents were overwhelmingly supportive of the Community + APD initiative. Most offered recommendations for strengthening the program, but all respondents agreed that the Community + APD program was a worthwhile investment of community, City of Austin and APD resources. The Community + APD meetings created an uncommon mechanism for direct resident accountability and the multidimensional meeting structure facilitated a variety of group dynamics. Equity Office staff leveraged the Equity Action Team's deep community roots to recruit a broad spectrum of community participants. Despite a volatile political climate, Community + APD participants gathered each week and honored the contract that they had drafted together, engaging in a constructive and respectful dialogue.

This report's findings indicate a need for increased institutional support for the Community + APD initiative. City leaders should provide expanded resources to address shortcomings identified during the program's pilot phase. Interview respondents from all groups agreed that future participants would benefit from a more in-depth training/onboarding process, including informative sessions on the structure and history of APD, the equity analysis process and other topics that would facilitate more productive discussions. This report also offers a series of detailed recommendations based on the interview responses of Community + APD participants. These recommendations include:

- additional training + onboarding + relationship building sessions
- increased budgetary support
- incentive packages for Community +APD initiative community members
- codified equity assessment standards at APD
- implementation of guidelines for increased cohesion and engagement
- development of equity liaison role within APD to facilitate assessment process

During a time of unprecedented public mobilization and often hostile rhetoric on issues of equity and policing, the Community + APD initiative provides an opportunity for peaceful, constructive dialogue between representatives of the police department and the communities that they are sworn to serve. City leaders should provide increased support to ensure that the Community +APD initiative can play a role in the equity assessment process for all APD divisions. Through increased support for this hopeful initiative and broader institutional backing for equity-driven change across city government, Austin's leaders can take a small step step down the narrow path toward mending the deep wounds caused by decades of systemic oppression and structural directed toward Black, Latinx, Indigenous, immigrant, refugee, LGBTQ+ and other historically marginalized communities who live, work, and worship in Austin.

Background: Equity Office and Equity Assessment Tool

In 2015, the Austin City Council passed resolution 20150507-027, directing the City Manager to "provide resources for a working group to gather information for improving health outcomes of infants, mothers and other members of the community."[1] The resolution called on this working group to begin the process of addressing and alleviating the decades-long impact of Austin's historic and systemic racism. This working group comprised what eventually would be known as the Equity Action Team (EAT). The EAT includes residents, community leaders, representatives of nonprofits that provide services in Austin, organizers, advocates, and activists.

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[1] Austin City Council Resolution 20150507-027

OGP commitments, OGP's Independent Reporting Mechanism (IRM) awarded the Equity Assessment Tool with "Starred Commitment" status, indicating a significant advance in open government principles and a measurable step towards implementing those principles.

Community + APD Meeting Series: Background

In 2018, Austin's City Manager supported the expansion of departmental equity assessments and mandated that all City departments complete the process. The second equity assessment cohort included the Austin Police Department, an immense organization with 2,646 employees divided among 48 divisions. Due to the department's size and input from the community, Equity Office staff determined that it would benefit the process, the community and the police department to directly engage community members and APD employees in a series of dialogues over several months in 2019 as part of APD's equity assessment process. These meetings were generally referred to as "Community and APD." For the purposes of this report, the meeting series is referred to interchangeably as Community + APD or C+APD.

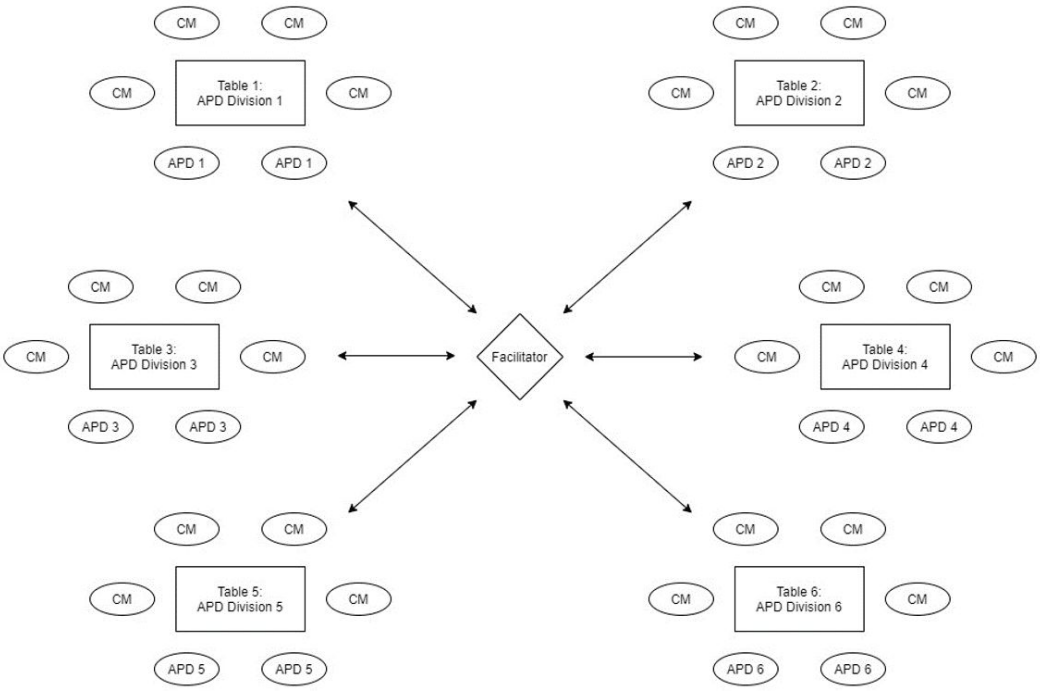
Community + APD Meeting Series - Overview and Structure

The pilot series of C+APD meetings involved seven APD divisions: Recruiting, Training, Finance, Internal Affairs and Professional Standards, Human Resources and Administration, Data Planning, and Victims Services. During the C+APD meeting series, meetings took one of two structures: small group discussions based on division or large format discussions, during which each division presented.

Small Group Format. During the first segment of meetings, participants met in small groups, with several community members gathering around a table with representatives from a single APD division (see Figure 1). Representatives from each division responded to community members' questions, which were generated in response to answers from APD's equity assessment. After division representatives answered initial questions, community members and APD engaged in dialogue to clarify answers, seek and provide further information, and address community concerns related to each division's responses. After a period of time, the C+APD

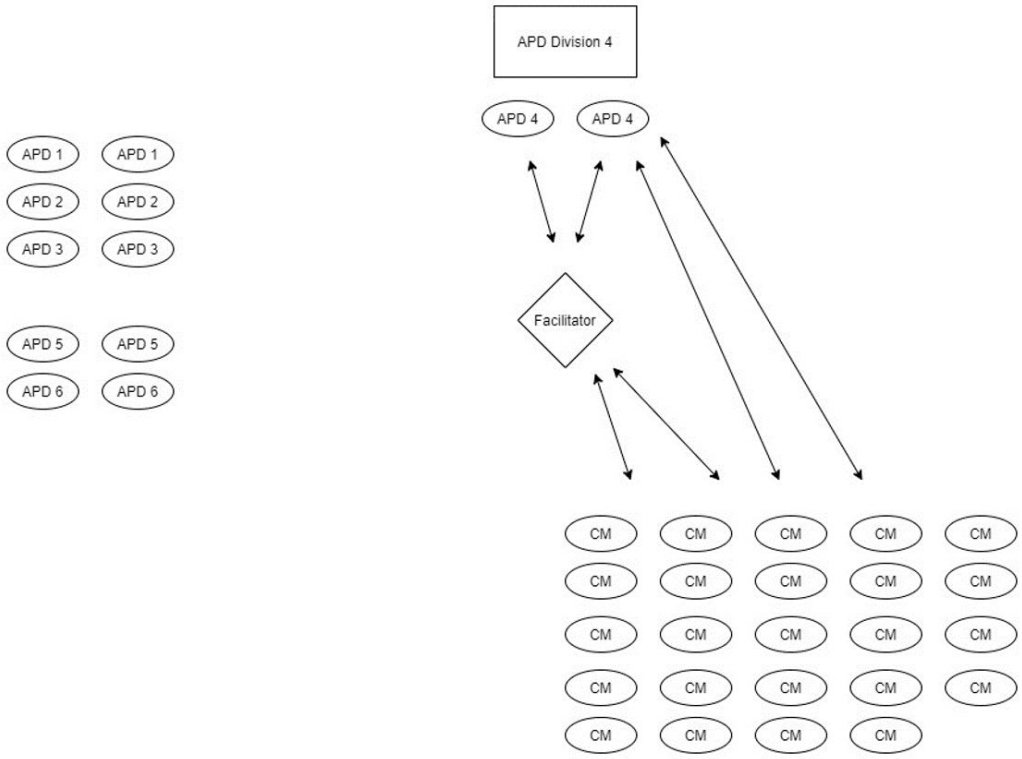
facilitator directed the community groups to rotate and join different division tables, repeating the dialogue process several times until the meeting was concluded.

Figure 1. Discussion Structure 1: Community + APD Equity Assessment Process



Large Group Format. In addition to the roundtable discussions, C+APD participants discussed APD equity assessment responses in a large group format (see Figure 2). Under this arrangement, rather than separating community members into small groups, community members remained gathered in a single, large group. Community questions were presented to APD division leaders one at a time, with an allotted period for discussion afterward. After the allotted time had elapsed, APD divisions rotated and the discussions continued until the meeting was concluded.

Figure 2. Discussion Structure 2: Community + APD Equity Assessment Process



To ensure transparency and accountability, the Equity Office contracted a researcher to attend C+APD meetings, observe interactions between participants, conduct qualitative interviews with participants, and produce recommendations for improving the C+APD equity analysis process. The goals of this research and purposes of this report are to:

- Identify common themes expressed by participants
- Analyze the C+APD program's strengths, weakness, opportunities and threats
- Generate actionable, evidence-driven recommendations for future meetings

Since August 2019, the researcher tasked with producing this report has completed the following research activities:

- Community + APD meeting attendance and observation
- Desk research
- Semi-structured, qualitative interviews with C+APD participants

This report draws equally from the researcher's observations, background research and interview responses. During C+APD meetings, the researcher observed interactions between participants to identify common themes, obtained direct feedback from participants and documented the meeting structure and other details. Participant interviews included Equity Office/C+APD staff, Austin community members, and APD staff and sworn officers. Interviews were semi-structured and tailored to participant roles. While some questions were posed to all participants, APD staff and officers were asked questions that related directly to their role, work, experiences, and perspectives as members of APD. Similarly, community members were asked questions that related directly to their experience and perspectives as community members.

Interviewees self-selected into the study group. After the C+APD meeting series concluded, Equity Office staff provided the researcher with a contact list of C+APD meeting participants, both community members and APD. The researcher invited all C+APD contacts to participate in

an initial survey. Those who responded to the survey were invited to participate in a longer, qualitative interview. The researcher conducted twelve semi-structured interviews, during which respondents were asked a series of prepared questions. Upon completion of the prepared questions, the researcher asked participants to offer general thoughts, recommendations and general responses to the C+APD experience. Interview participants included APD staff and officers (5), community members (4) and Equity Office staff (2). Due to the sensitive nature of the interviews, concerns about possible retaliation toward respondents, and a desire to create a safe space where respondents could offer their unfiltered perspectives, the researcher anonymized the respondents. To this end and for the purposes of this report, respondents are described as APD employees, community members, or equity office staff. Any language that may indicate the identity of specific respondents has been intentionally omitted from this report.

Results

The organizers and participants of the C+APD undertook a difficult task with relatively little precedent. The pilot series of C+APD meetings provided a strong baseline upon which Equity Office staff can build future meeting series. While interview respondents offered a host of recommendations for improving the experience, each participant expressed overall satisfaction with the program. Equity Office staff increased accountability by engaging a wide range of community perspectives and including an evaluation mechanism. The C+APD facilitator varied the meeting structure, allowing participants to engage with one another in multiple formats, including small group and large presentation settings. City staff successfully recruited community participants with a range of perspectives, and participants honored a contract to engage in respectful, constructive dialogue.

Figure 3. SWOT Analysis of Community + APD Equity Assessment Process

Strengths	**Opportunities**
Strong buy-in from community, APD staff/officers and city staff	Strengthening citizen oversight mechanisms, reinforcing community dialogues
Direct community engagement provided by meeting structure provided increased transparency and accountability	Development and implementation of C+APD training curriculum
Multi-dimensional meeting structure increased opportunities for dialogue	Increased budgetary support to Equity Office for resources, staffing, translation services
City staff recruited broad spectrum of community participants	Incentive programs to strengthen community participation
City staff and facilitator created a "graceful space" - participants honored group contract	Development of standard equity assessment process within APD
Weaknesses	**Threats**
Lack of resources and incentives limits engagement	External pressure from political actors and political climate may influence participants
Community members and APD lacked comprehensive training, sufficient preparation	Fear of retaliation, other threats increase attrition and decrease participant engagement
Time constraints limit opportunities to build trust between community and APD	High profile incidents may influence participant engagement
Absence of accountability metrics makes it difficult to measure equity-related outcomes	Systemic, institutional racism threatens to prevent high level changes
Participants did not clearly understand goals or intended outcomes	Failure to codify equity standards and assessment processes weaken institutional memory

Through their discourse during meetings and their survey and interview responses, C+APD participants highlighted a litany of positive experiences, opportunities for improvement, moments of confusion, challenges, frustrations and hopes. This report synthesizes their ideas into an abbreviated SWOT analysis, highlighting the C+APD initiative's strengths, weaknesses, opportunities, and threats. These are outlined in Figure 3 above and the bulleted lists below.

Strengths

- Strong buy-in from community members, APD and staff
- Direct community engagement and evaluation increase transparency and accountability
- Multi-dimensional meeting structure increased dialogue
- City staff recruited broad spectrum of community perspective
- "Graceful space" - participants honored group contract

Weaknesses

- Lack of resources and incentives limits engagement
- Community members and APD lacked comprehensive training, sufficient preparation
- Time constraints limit opportunities to build trust between community and APD
- Absence of accountability metrics makes it difficult to measure equity-related outcomes
- Participants did not clearly understand goals or intended outcomes

Opportunities

- Strengthening citizen oversight mechanisms, reinforcing community dialogues
- Development and implementation of training curriculum
- Increased budgetary support to Equity Office for resources, staffing, translation services
- Incentive programs to strengthen community participation
- Development of standard equity assessment process within APD

Threats

- External pressure from political actors and political climate may influence participants
- Fear of retaliation, other threats increase attrition and decrease participant engagement
- High profile incidents may influence participant engagement
- Systemic, institutional racism threatens to prevent high level changes
- Failure to codify equity standards and assessment processes weaken institutional memory

General Recommendations

Due to widespread support from community members, APD employees and City officials, the researcher recommends that city officials extend the Community + APD meeting series and include a series of C+APD meetings as part of each cohort of APD divisions' equity analysis process. While the pilot series of meetings accomplished a great deal of progress, the researcher has included the following list of recommendations to improve the C+APD process and the overall experience of C+APD participants. These recommendations are designed to represent participant voices by synthesizing the collective needs expressed during meetings, surveys and interviews.

Recommendation 1: Develop a training workshop that briefs participants on equity principles, equity analysis tool and process, APD systems and C+APD goals

Most interview respondents expressed a general lack of understanding of the overarching goals or intended outcomes of the C+APD process. Equity Office staff should develop and incorporate one full day or two half days of training for all C+APD participants that includes:

- Equity principles and frameworks
- History of Equity Office and equity assessment tool
- Equity assessment process: guidelines for implementation
- APD organizational history, systems, structure and processes
- C+APD process, goals, intended outcomes, and process

Recommendation 2: City officials should reallocate a portion of the public safety budget to the Equity Office to ensure the success and sustainability of future C+APD meeting series.

The Community + APD pilot program achieved remarkable results while operating with significantly constrained resources. City officials should increase budgetary support to the Equity Office to directly support the expansion of the C+APD initiative. The Equity Office should include specific funding for the expansion of C+APD in future budget requests, and City officials should honor these requests as a commitment to the community members engaged in

these critical dialogues. These resources should be reallocated from the public safety budget as an earnest investment and symbol of commitment to improving APD's relationship with the community.

Recommendation 3: To increase participation and mitigate attrition, officials should develop an incentive package for community participants who are attending as independent residents.

Community members struggle to participate in important initiatives such as the C+APD program. Many economic factors, including the cost of transportation and the lack of childcare, prohibit residents from participating in the C+APD initiative. To increase access to meetings and enrich the discussions with the voices and lived experiences of Austin residents, City leaders should fund the development of incentive packages for resident participants. These packages can include:

- Stipends to cover travel and participation costs
- Childcare services for families
- Translation services for non-English speaking participants
- Additional services or incentives that may increase engagement

Recommendation 4: To foster trust, APD officers and staff should attend meetings in business casual or casual "civilian dress" and should arrive at meetings unarmed.

Community members, APD staff and sworn officers all identified a need for increased trust between participants. During interviews, many respondents agreed that the mere presence of a police officer's tactical gear, especially an officer's service weapon, can make community members less likely to engage in a difficult, honest dialogue and generally make community members feel less comfortable. All C+APD participants should take measures to increase trust and foster a comfortable meeting space. APD leadership should direct all armed officers participating in the C+APD program to arrive in casual clothing and to attend meetings unarmed.

Recommendation 5: Officials must codify APD equity standards and assessment processes. APD division leaders undertook varied approaches when completing the equity assessment process. Some division leaders collaborated with staff to provide comprehensive, quantitative answers to the assessment tool's list of questions. Other division leaders completed the assessment without input from other staff. In interviews, APD staff highlighted a lack of clear direction from APD leadership for completing the equity assessment process. By co-creating equity assessment standards with support from the Equity Office and codifying those standards as department-wide protocol, APD leadership can better support division leaders and ensure assessment results that are measurable, accurate and actionable.

Recommendation 6: Create an equity liaison role, overseen by the Equity Office, to ensure continual support and accountability for all APD divisions as they address inequities. During interviews, APD participants expressed support for additional guidance during the equity assessment process. Most divisions and division leaders lack the additional time needed to learn and implement the equity tool well. City officials should create and fund an equity assessment liaison, a role housed outside of the police department to ensure independence. This individual would oversee the implementation of a systemic, department-wide equity assessment process. As new cohorts of divisions complete the assessment process, this equity liaison would provide support, guidance, and oversight of division leaders and their teams. The liaison would ensure that each division's equity analysis gathered measurable evidence and produced actionable results. The independence of this role, and of any positioning ensuring accountability to equity standards, is absolutely critical.

A note on Recommendation 6: Many public agencies assume that symbolic hiring will solve issues of organizational racism. Simply creating an equity officer (or similar administrative role) within the police department will not solve the systemic issues facing APD. Creating such a role within the police department would provide the opportunity for current leadership to evade its own obligations to serious reforms. Before any new positions are created within APD, the

agency must address the deep systemic and cultural problems that have been brought to light during recent events and during the C+APD meetings.

Conclusion, Context, and Insights

This report provides a series of achievable recommendations that comprise a single first step toward a stronger, more equitable relationship between the communities of Austin, Texas, and the privileged individuals who are sworn to serve those communities. These recommendations include increased financial and staffing support for the C+APD community dialogue series, actionable guidelines for APD employees to help build trust with community members, and codified equity standards to ensure deep systemic and cultural change at APD.

It is impossible to deliver this report without reflecting on the demonstrations taking place right now in cities across the United States, including Austin, in response to ongoing, systemic abuse and violence against Black, brown and poor communities by police forces; violations of international human rights standards by police forces; rapid militarization of local police forces; and cultures of racism, sexism, and homophobia among American police agencies. It is also essential to reflect on the ongoing police and military response to those demonstrations. How can a community place trust in the commitments of APD leaders to *de-escalatory, anti-racist* training policies when its riot control officers are shooting unarmed Black demonstrators in the face at short range with rubber bullets and launching CS gas into crowds that include children and pregnant women? How does the community trust the commitment of police leadership to *de-escalatory, anti-racist* training policies when another unarmed Black man is fatally shot by its officers in broad daylight in front of an exhausted community? How can community members build trust with police leaders who choose to leave as a unit during lunch at anti-racism workshops rather than break bread with the community members who have given their time freely to do the tremendous work of undoing systemic racism? These crucial questions arose from the community during interviews and conversations throughout this evaluation. Their honest criticisms provide critical citizen perspectives and a starting point for City leaders committed to building a more just and equitable Austin.

About the Researcher

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Racial Inequities and Institutional Racism:

A Report Submitted to The City of Austin Equity Office and The Austin Police Department

Joyce James Consulting
Equal Treatment Does Not Lead To Equity

November 2020

TABLE OF CONTENTS

Executive Summary 5
Introduction 5
Theories of Action 5
Background 5
Methodology 5
Documentation Review 5
Interviews 6
APD Climate Assessment Survey 6
"A Groundwater Analysis of Racial Inequities" Training 6
Analytical Framework—Texas Model for Addressing Racial Disproportionality and Disparities (2010) 6
Documentation Review—General Conclusions 6
Tatum Report 6
Police Profiling 7
Use of Force 7
Police Training 7
Community Policing 7
Recommendations 8
Data Driven Strategies 8
Leadership Development 8
Culturally Competent Workforce 8
Community Engagement: a four staged process 8
Cross Systems Collaboration 8
Training Defined by Anti-Racist Principles 9
An Understanding of the History of Institutional Racism and the Impact on Poor Communities and Communities of Color 9
Quick Wins 9
Documentation Review and Analysis 10
The Tatum Report 10
Review of the Report 10
Overview of the Report Recommendations 11
Key Observations/Comments from Interviews 11
Survey Data 11
The Joint Report on Racial Profiling, Responses and National Data 12
Austin Data 12
Overview of Recommendations 14
National Data 14
Key Observations/Comments from Interviews 15
Responses to the Report 15
Survey Data 17

Police Use of Force and Shootings 18
Austin Data 18
National Data 18
Key Observations/Comments from Interviews on Use of Force 18
Recommendations on Police Shootings and the Use of Force by the Office of Police Oversight 18
Survey Data 19
Police Training 19
Austin Data 19
National Data 20
Dr. Villanueva Recommendations 20
Key Observations/Comments from Interviews Regarding Training and Advancement 20
Community Responses to Training: (From the Responses to the Joint Report on Police Profiling) 22
Response 3 22
Community Policing 23
Austin Data 23
Community Policing Matrix Report 2020 Key Recommendations 23
Community Policing/Advancement in Austin 2020 23
National Data 23
Key Observations/Comments from Interviews 24
Survey Data 25
Conclusion 25
References 26
Appendix A: APD Climate Assessment Survey 27
Appendix B: Community Engagement Model 30
Appendix C:A Groundwater Analysis of Racial Inequities 32
Appendix D: The Groundwater Analysis Workshop Technical Assistance Report 35

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EXECUTIVE SUMMARY

Introduction

Joyce James Consulting, LLC (JJC) prepared this report for the City of Austin (City) Office of Equity (OOE). The OOE engaged JJC to help identify racial inequities within the Austin Police Department (APD) and develop immediate and prolonged strategies to eliminate them. Key components of the scope of work addressed by this report include a documentation review relevant to APD and racial disparities; survey of the APD climate and culture to include selected interviews; facilitation of the Groundwater Analysis® training and debrief for APD leadership; and work with the APD and OOE to develop the strategies and objectives based on the findings from the documentation review, interviews, training, and debrief.

The mission of JJC is to support organizations, institutions, systems and communities in developing a racial equity lens to recognize institutional and structural racism as the root cause of racial inequities in all systems. By assisting in the development of organizational cultures that actively engage in sustainable strategies to eliminate racism, JJC works to improve systemic outcomes for all populations.

JJC has decades of unique experience and proven success in reducing systemic racial disproportionality and disparities. Using the Texas Model for addressing racial inequities as an analytical framework and the Groundwater Analysis of Racial Inequities, JJC's work focuses on the intersectionality of racial inequities and deeply rooted institutional and structural racism.

Theories of Action

The success of the Texas Model, pioneered by Joyce James, is attributable to three theories of action: transformative learning, critical race theory (CRT), and adult learning.

Transformative learning is the "process of experiential learning, critical self-reflection, and rational discourse that can be stimulated by people, events, or changes in contexts that challenge the learner's basic assumptions" (Brown, 2006). Through transformative learning, key leaders and critical stakeholders will develop new learning that constructs and appropriates critical shifts in interpreting quantitative and qualitative data and information on racial inequities (Taylor, 2008).

Relative to transformational learning, key features of the critical race theory will serve to enhance and inform equity strategies. CRT argues that "racism and other forms of oppression are central to the experience of people of color and dominant ideologies justify the status quo/structural oppression and must be challenged" (DeMatthews, 2016).

Finally, the adult learning theory, in this context, means "making" or building "knowledge construction" in a way that fosters "critical reflection...essential for transformative learning" (Merriam, 2008). Leadership learning must take place using strategies that promote reflection, discussion, and action.

Background

The APD is a quintessential twenty-first century urban law enforcement organization. With more than 2,600 sworn and civilian personnel, the APD operates inside a densely populated city core and citizenry of nearly one million. Like many urban U. S. cities, the APD data show decades of racial disparities. That is, the known differences in how APD officers interact with people in communities of color.

City leadership is demanding change and voice a commitment, "...to implementing policy and cultural changes to address the disproportionate impact of police violence on people of color and other affected communities." To this end, the OOE and APD are working to make institutional and structural racism, which may be invisible to some, consciously aware to all. The ongoing, intentional and deliberate effort now underway by the APD is critical to moving beyond a somewhat singular emphasis on the bias, prejudice, and bigotry of racism at an individual level to a deeper more systemic analysis of the APD policies, practices and procedures that contribute to racial inequities and a culture that may be at work to keep them in place.

Methodology

Documentation Review

The documentation review reflects a national context when appropriate. While the OOE engaged JJC prior to the death of George Floyd and subsequent protests in Austin and across the country, racial strife in our country is not new nor is the racial strain between the police and the citizens (Brown, 2020; also see NPR on History of Policing in America).

The documentation review was inclusive of the following reports and documents:

- *Austin Police Department Independent Investigation Fact Investigation (referred to as the "Tatum Report")*
- *Analysis of Austin Police Department's Racial Profiling Report, January 2020*
- *The Science of Policing Equity*
- *Austin Police Department Annual Racial Profiling Report (Years 2006-2017)*
- *Community Policing Advancement in Austin*
- The APD Response to the Joint Report
- APD Training Academy Review and Strategic Plan

Interviews

To further examine the current APD institutional culture, JJC conducted interviews with individuals and small groups of internal and external stakeholders. These groups included civilian and sworn staff, affinity groups, the Office of Police Oversight, the OOE, and community members. It should be noted that throughout this report, where possible, the comments of interviewees are verbatim. However, because sessions were not recorded, some verbiage may have been missed. Additionally, when the interviewee/respondent could be identified by their comments, those comments were summarized to maintain the confidentiality of the process.

APD Climate Assessment Survey

To further assess the current APD culture about race and equity, both civilian and sworn staff completed a racial equity assessment. The entire survey can be found in Appendix A and specific responses are provided in the appropriate sections of this report.

"A Groundwater Analysis of Racial Inequities" Training

JJC conducted a two-day Groundwater Analysis workshop for APD sworn and civilian leadership, representatives of the equity office, and members of the community on September 24-25, 2020 (Appendix C). JJC pre- and post-training surveys and an evaluation were completed by participants. The initial evaluation responses from many participants were that "this is the best training we have ever had" and post-training surveys confirm a significant and positive shift in their understanding of institutional and structural racism and the impact on the racial inequities that exist within APD culture. Complete analysis of participants' responses on the surveys and evaluation are provided in Appendix D this report.

Analytical Framework—Texas Model for Addressing Racial Disproportionality and Disparities (2010)

Developed in 2010, the Texas Model for Addressing Racial Disproportionality and Disparities (Texas Model) has been found to effectively reduce racial inequities and improve outcomes for all populations in Texas (James, et. al., 2020). The Texas Model, described below, serves as the analytical framework for the JJC APD recommendations in this report.

- Data-driven strategies: regularly collect, research, analyze, and evaluate data in line with a racial equity approach
- Leadership development: grow both systems and community leaders that are courageous and grounded in a racial equity approach
- Culturally competent workforce: develop workforce that reviews and examines its work through an anti-racist and humanistic lens
- Community engagement: recognize strengths of grass roots community, hear its ideas, and include it throughout process
- Cross systems collaboration: share data, training, and dialogue with systems, institutions, and agencies that serve the same populations
- Training defined by anti-racist principles: train ourselves and partners in principles that ensure we work at cultural and institutional levels
- An understanding of the history of institutional racism and the impact on poor communities and communities of color: develop common analysis of racism and history that led to current outcomes

Documentation Review—General Conclusions

Tatum Report

Interviews and surveys tended to support the Tatum report allegations of internal negative issues at APD regarding race, gender, and sexual orientation. Interviewees regarded the handling of the report as generating a lack of trust and a view that specific action would not be taken to remediate the problems. Survey data indicated that African Americans were less satisfied

with the workplace climate related to promotion, complaints, and fairness than Hispanics/Latinxs and Whites. Women were more dissatisfied than men along these survey dimensions.

Police Profiling

National and local data indicate that a higher percentage of African Americans, and Latinxs were stopped, cited, arrested, and searched than Whites, even when other factors were considered (e.g., visibility of occupant). It is also on the rise. Three reports responding to the profiling data were reviewed. This, as well as interviews, and survey data on attitudes toward race, gender, and sexual orientation converged to paint a picture of an institutional culture that lacks accountability at the leadership level in responding to repeated complaints about racism, gender, and sexual orientation. Interviews with management indicated their awareness of the report findings as did community members. Survey data on attitudes toward race indicated that African Americans generally were in less agreement with APD's tolerance toward race, institutional and structural racism, non-discriminatory practices, and their ability to raise questions and provide solutions along these lines. The findings were acknowledged by the Chief of Police and his response to the recommendations in the profiling report are elaborated verbatim in Response 3 to the profiling report. We also recommend as part of the data analysis above in the Texas Model that police profiling should contain a thorough verification and clear, transparent reporting of whom they stop, and should require a more comprehensive analysis (e.g., causative factors such as poverty, race community, crime, dispatching, etc.)

Use of Force

The sources of information reviewed converge on use of force being, in part, racial. The 2016 Austin data clearly show that force and force severity is disproportionately used on African Americans, even when other neighborhood demographic characteristics such as poverty and crime are considered. National data on police shootings show that African American men and women, and Latino men and Latina women are far more likely to be killed than White men and women. APD reported twelve cases with Officer involved shootings for the year, with five ending in fatalities. All five were minorities. The survey indicated that most respondents are aware of the police reports contained in this document, including profiling and the use of force. Interviewees suggested more consistent use of body cameras and training that focuses on examining socialized attitudes and assumptions that have led to fear on the part of the police to communities of color. Recommendations included greater specification of force and shooting incidents in reports (to include the mentally ill) and increased training on de-escalation.

Police Training

The report on training by Dr. Villanueva was consistent with the survey in this report as were the interview comments. These lined up with national information. Weaknesses were found throughout the system and included the structure, culture, curriculum, and teaching effectiveness. The paramilitary format and less attention to different learning styles and community policing were found to lead to greater attrition. Moving from a warrior mindset to a guardian mindset was one of the stronger recommendations as was more diverse recruiting and greater discussion on the criteria for rejection (e.g., credit scores, financial status). These sentiments were echoed in interviews along with the need for resolving complaints by recruits, better mental health and trauma training, improved recruitment of more officers of color and women (national data also reflect this), diversity of instructors and materials presented, more information on institutional/structural racism, mentorship, and developing a better career path for recruits. Recommendations included transformation to an adult learning model, more attention and awareness of racial issues, and community placements for cadets to help build relationships in the community.

Community Policing

National data, local interviews and survey data all confirm that community policing in Austin could be improved. In particular, the information suggests that the community itself should have a much more active role in building a partnership and working in collaboration with the police in their communities. The national data suggest what community policing could be, how it could affect legitimacy, and satisfaction on all participants and even crime. However, there are three obstacles that impede these goals: (1) the lack of time on the part of the police and lack of trust in them, (2) the lack of empowerment of the marginalized communities to have a true partnership with the police, and (3) over-policing these communities. African American survey

respondents were less likely to endorse the current effectiveness of community policing than Whites or Hispanics/Latinxs.

Recommendations

The following JJC recommendations outline the proposed APD strategies to reduce and ultimately eliminate racial inequities, institutional racism, including gender and sexual orientation within its systems and improve outcomes for all populations.

Data Driven Strategies

- Examine data on the attrition rates of Blacks and develop new strategies for recruitment and retention.
- Use data to inform and obtain input from internal and external stakeholders to develop a new and bold out of the box community policing model in a real community engagement process.
- Assess the capacity of new and existing staff to examine old attitudes, assumptions, and stereotypes about race, gender, and sexual orientation.
- Create a clearly defined roadmap with appropriate metrics, benchmarks, and milestones that define and gauge progress.
- Verify that police profiling ensures clear and transparent reporting of whom they stop and undergo a more comprehensive analysis (e.g., causative factors such as poverty, race, community, crime, dispatching, etc.).

Leadership Development

- Demonstrate a higher level of accountability for creating a visible anti-racist institutional culture at all levels of leadership within APD.
- Take steps to create a short-term career ladder to hire/promote a critical mass of African Americans in leadership positions, including Commanders and Assistant Chiefs.
- Require representatives from the executive team, including internal affairs, the union, and all affinity groups to participate in regular and ongoing leadership development sessions to intentionally expand their racial equity lens and build their capacity to contribute to reducing inequities and improving outcomes for all.
- Review employment policies and practices through a racial equity lens, especially as they relate to promotions, transfers, and hiring disqualifiers. For example, consider allowing second chances for bad credit, eviction, and so forth.
- Include in the field training officers program opportunities to ensure that new officers transfer their academy training to the field regarding racial equity. For example, explore including "ride-alongs" in the community as a part of the academy training.

Culturally Competent Workforce

- Add racial equity training (Groundwater Analysis) to (a) supervisor training class; (b) the 40-hour officer re-certification class; (c) academy instructor training; and (d) existing cadet academy diversity training. **The Groundwater Analysis training is TCOLE approved for credit for diversity training.**
- Utilize the Groundwater Analysis workshop for racial equity training with leadership and staff at all levels that includes a focus on understanding institutional and structural racism that has led to socialized attitudes and assumptions resulting in fear on the part of the police in communities of color and leading to more arrests, shootings, and fatalities.
- Develop a timeline for training all APD staff and special units in the Groundwater Analysis.

Community Engagement: a four staged process

- Implement the JJC Community Engagement Model (Appendix B).
- Develop, in collaboration with APD and TPOA, a mentoring program for African American cadet populations who have been impacted by institutional and structural racism.
- Invite individuals and community groups no longer engaged with APD back to the table.
- Demonstrate transparency in regularly communicating with internal and external stakeholders.
- Develop specific strategies to hear voices from all segments of the community, e.g. homeless, LGBTQ(IA+), inclusive of black trans women.

Cross Systems Collaboration

- Collaborate with City of Austin's departments and other systems that are making decisions that impact APD's work, e.g. education, housing, health/mental health, CPS, and financial institutions.
- Develop strategies that result in optimal collective impact on internal and external communities.
- Convene an information sharing summit that includes

all of the various groups that are working to develop plans that impact APD e.g. Reimagine Austin.

Training Defined by Anti-Racist Principles

- Develop a formalized process for all new cadets to engage with the communities that experience the most disparate treatment in relationships with APD, as part of their training.
- Make it clear on the front end of hiring and throughout the system that there is zero tolerance for racism.
- Examine and remove any materials, videos, etc. that stereotype Black men as being more criminal.

An Understanding of the History of Institutional Racism and the Impact on Poor Communities and Communities of Color

- Develop processes during ongoing JJC strategic planning sessions to monitor, measure, evaluate, and make visible, the strategies for addressing the long history of racism that has continued to create and perpetuate less than desirable outcomes for internal and external stakeholders.
- Apply a deeper awareness and sensitivity to Black culture in the hiring process.
- Develop strategies to eliminate excessive use of force while at the same time considering the common goal of APD's desire for officers to go home after every shift, and the community's desire for their loved ones to come home after being stopped by the police.
- Use the true history of policing to raise the awareness of all APD officers and staff about the lingering effects of racism.

Quick Wins

1. Circulate an agency-wide communication from the Chief utilizing the consultant's report as a vehicle for opening lines of internal communication, acknowledging mistakes, and making the commitment to lead the work of creating an anti-racist institutional culture in APD. (This will be ongoing, but it can start right away.)
2. Provide Groundwater Analysis workshop to APD recruiters and training officers in advance of the next cadet class.
3. Based on positive response, prioritize Groundwater Analysis training at all levels of APD, with a specific focus on those areas with the greatest need for immediate training, based on the very positive response to the recent workshop.
4. Identify in collaboration with APD communications, various opportunities to share and discuss this report with the community and obtain their feedback on the recommended strategies.
5. Begin planning for a specific community engagement initiative with residents of a Patrol Sector to be identified with input from community stakeholders, assigned officers, and Affinity Groups such as TPOA, that will focus on building trust and opportunities for a new and effective model of community policing
6. Incorporate recommended strategies for working with TPOA into this framework to ensure consistency in working from an analysis of institutional racism and through a racial equity lens.
7. Engage and utilize the voices of community members involved in the Groundwater Analysis workshop, debrief, and strategy session to work with APD in regaining the trust of the community and to ensure their ideas do not get lost in the process.

DOCUMENTATION REVIEW AND ANALYSIS

The Tatum Report

Review of the Report

The Tatum Law firm was hired by the City Manager (City of Austin) on November 15, 2019 to conduct an independent investigation as to the validity of allegations of discrimination and misconduct *within* the Austin Police Department. Three of the complaints filed with the Office of Police Oversight were anonymous and two of the allegations were filed by Commander Jason Dusterhoft.

The Tatum Report listed the following complaints and allegations to be investigated:

> The first anonymous complaint was filed against Assistant Chief Newsom and Chief Manley. It alleged that Assistant Chief Newsom had been using the "n---" word to describe African Americans for over a decade and his conduct was evidenced by text exchanges which Chief Manley was aware of. There was also an amendment to this anonymous complaint filed alleging that Assistant Chief Newsom was notified of the complaint against him for racist behavior before the investigation began, allowing him to retire and receive full retirement pay. Next, an anonymous complaint was filed regarding an anti-gay environment within APD, alleging Chief Manley supported the anti-gay mindset of Assistant Chief Gay in advocating the use of gay conversion therapy. Last, allegations were raised by Commander Jason Dusterhoft during his arbitration hearing which includes twelve instances of criminal or APD violations (7 allegations and 5 examples of disparate treatment or attempted retaliation) which he states were reported by him directly and to Assistant City Manager Rey Arellano. He also filed a complaint alleging failure to comply with subpoenas issued to Chief Manley, Chief of Staff Gay, Assistant Chief Newsom, and Assistant Chief Chacon for testimony or production of documents related to his arbitration hearing.

Ms. Tatum was not able to substantiate these allegations, and after numerous attempts and interviews, she was unable to obtain documents and evidence pertaining to the complaints under investigation. Some evidence was outside of the 180 Day rule and therefore not applicable and other documents were not able to be located by APD. Among the 74 interviews performed by Tatum Law, twenty of those individuals asked to be anonymous. There were several conclusions made by Ms. Tatum's team after conducting these interviews. One, there was a high level of fear of retaliation among active duty officers and unsworn staff. Second, there was an exceptionally low degree of expectation by these individuals that any investigation would reveal the truth based on past experiences. Last, there were doubts to the sincerity of City leadership to enforce changes necessary for APD to improve practices.

The theme of retaliation is evident throughout the interviews. These interviews also exposed how inconsistently complaints and officer misconduct are handled. The current policy allows for these matters to be resolved or dealt with in several different ways by different departments. Currently, the complaints or misconduct have the option to be handled by a direct Supervisor, Assistant Chief, Chief of Police, or Internal Affairs. Tatum Law advised that a "more uniform application of policy would result in more predictable and suitable outcomes." This will also help to prevent a discriminatory process in relation to disciplinary action. As an alternative, Tatum Law suggests APD address these reports through several avenues, including improved education, training, restructuring, re-assignment, and removal if necessary. In relation to the way officer conduct is handled, Tatum Law identified two policies in need of possible reform, the 180 Day Rule and the Meet and Confer Agreement.

Some other areas for improvement were pointed out through challenges faced by Tatum Law during their investigation. Another area where improvement was needed was with the Department's file management and retention system. Many documents requested in the investigation were not able to be located by APD. Also, Tatum Law suggests that "further training as it pertains to management training, and unconscious bias, racial, and cultural sensitivity training would be helpful to improve the current culture in the Department." Also, developing policies around the use of department issued property and equipment is necessary. A good start would be by implementing an electronic communications Code of Conduct and possibly an off duty social media policy. Finally, to provide further insight into the challenges that were presented from this investigation, Tatum

Law suggests it would be useful to gather more information to help identify trends within APD. Tatum Law feels this information "will enable City leadership to continue with a more focused direction of its mission of undoing racism as it pertains to APD."

Overview of the Report Recommendations

- Reevaluate the 180 Day Rule
- Reevaluate the Meet and Confer Policy
- Train all personnel on awareness of cultural sensitivities and racism
- Improve file management and retention
- Establish an electronic communications code of conduct
- Apply more uniform policies surrounding disciplinary actions

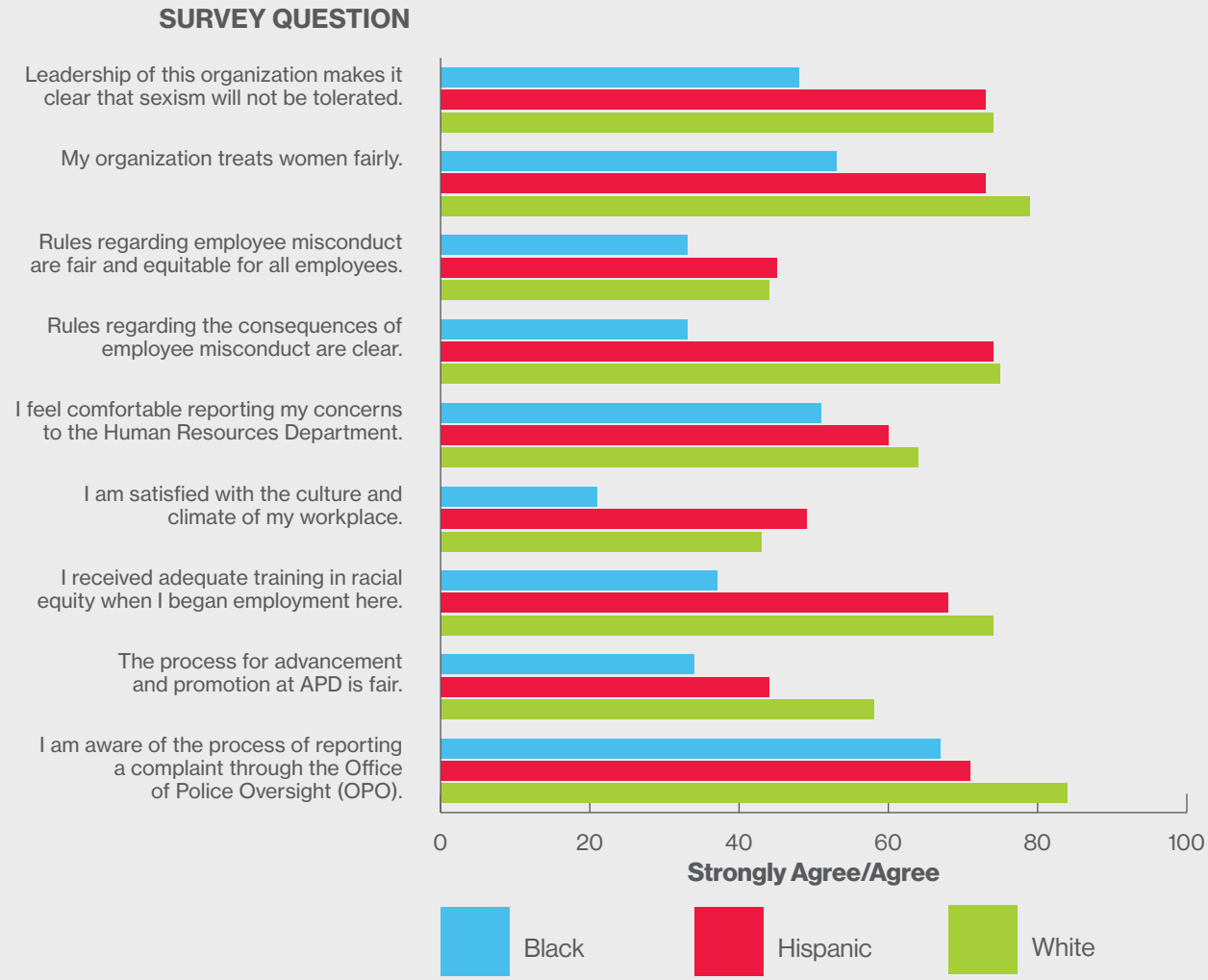
Key Observations/Comments from Interviews

- Through numerous individual and group interviews, JJC confirmed the Tatum report finding that some officers were reluctant to respond to consultants' questions. But others were transparent and forthcoming. Those who spoke freely opined that others were reluctant because they have seen no results after speaking with previous consultants and completing numerous surveys.
- Several high-ranking officers also expressed frustration with the Tatum report because they would have preferred more specific examples and strategies for addressing the disparities described.
- Throughout the Tatum interviews, reports by various ranking officers of different genders and races revealed that racist and sexist name calling, and the use of derogatory terms is persistent within the department. Many also expressed frustration that when reports of discrimination are made, there is no action, or they are held in excess for 180 days and then disregarded. Both officers and civilian staff interviewed expressed concern that complaints filed are handled unfairly and almost certainly comes with retaliation.
- The vast majority of JJC interviewees agreed with the Tatum findings listed above, which resulted in a lack of trust at APD, both internally and in terms of public image in the community. Many cited poor communications among employees as a contributing factor to mistrust. Some also said that employees who talked to the media not only lacked support but were victims of retaliation. In addition, a "code of silence" after the Newsome incident contributed to low morale. This mistrust has led to a view that the "Fifth Floor" supports the Union more than sworn officers.
- The Tatum Report recommended that the Department's file management and retention system be improved.
- When Tatum Law requested documents regarding evidence of disciplinary action, they were told they could not be found. With maintaining a more consistent file system the City could conduct audits assuring compliance with disciplinary policies.
- They felt that racial incidents were "swept under the rug" due to a poor management system. Others noted that the file management system is extremely antiquated; that paper files are kept in filing cabinets, and that files are not separated by race.
- Technology, such as more advanced forensics, is needed and should stay with APD because some aspects are only available to officers.
- Other systems that are automated do not talk to each other, making file retrieval cumbersome and time-consuming at best, especially when files are needed from multiple systems.
- Chief Manley took the lead on responding to the Tatum report, even though many of the charges were against him. The response and recommendations were pushed to the side or forgotten about. They didn't talk to HR.
- To achieve the cultural change necessary in the present climate, APD leadership at the top must have the political acumen, courage, strength, and awareness to get it done.
- The current structure of Human Resources is multilayered and limits effectiveness. One area needing improvement is more of a focus on what an individual should do if treated unfairly. Re-aligning divisions does nothing to address bias and racism.
- The Tatum report noted lack of defined professional development or career path.
- Some indicated that it is difficult for civilians and women in law enforcement.
- Women feel ignored at meetings and left out. As a civilian, they're treated as lower level employees. They feel like they are not part of the team.

Survey Data

There are eight survey questions that address directly or indirectly, issues related to the Tatum report. They are shown in the figure below. The responses range from an average of 2.86 to 4.06 on a five-point scale. (See Appendix A)

Figure 1: Internal Organizational Issues by Race/Ethnicity



Survey responses reflect that the experiences of White and Hispanic men are mostly positive and differ significantly from that of Blacks and Women.

Most notably, shown in Figure 1, Hispanic/Latinx and White respondents report more agreement with the climate of the workplace, equity training, fair advancement and promotion, the process for advancement, comfort reporting complaints and concerns, and the fairness of the rules than African American respondents. It is noteworthy that females do not think the organization treats women fairly compared to males. Moreover, females have somewhat less agreement with all internal organizational issues than men

These difference as they relate to the experiences of women and Blacks in APD, align with the overall findings in this report ..

The Joint Report on Racial Profiling, Responses and National Data

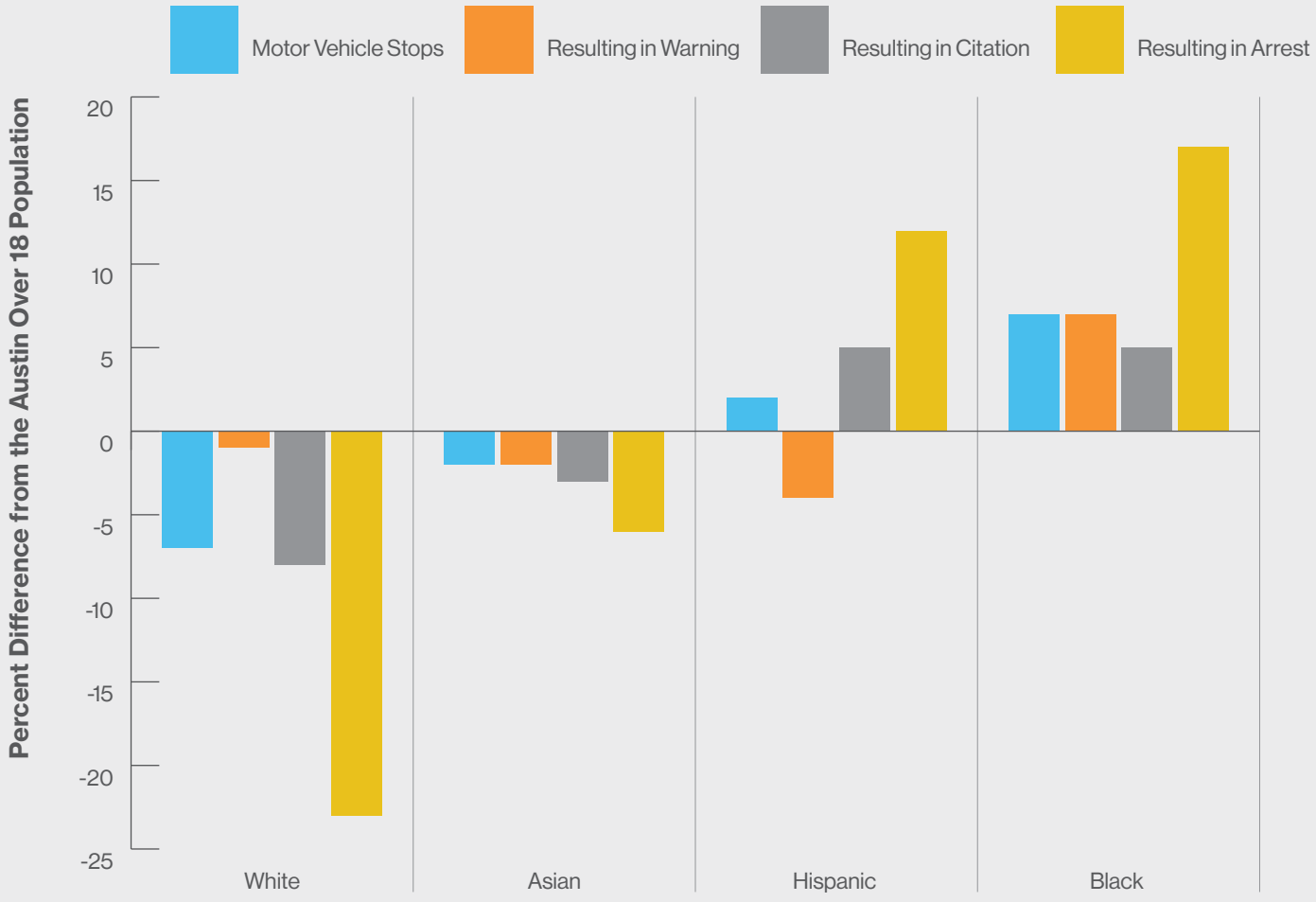
Austin Data

The Office of Police Oversight, the Office of Innovation and Equity Office issued a joint report on racial profiling (2020). That report contained information about motor vehicle stops, arrests, citations, warnings, and searches. The data were broken down by race/ethnicity and for the years 2015 to 2018. The figure above displays a summary of the data for 2018 because, with one exception, (fewer warnings for Hispanics/Latinxs) the pattern over the years is quite similar. Relative to their percentages in the driving age population, a higher percentage of African American drivers receive a higher percentage of stops, warnings, citations, and arrests than White drivers. They are followed by Hispanics/

Latinxs and Asians, relative to Whites. Warnings generally occur more to the West side of Austin and arrests more to the East side.

The telling difference between warnings vs. arrests in West and East Austin could suggest to some, a difference in driving habits of the minority communities on the East side. However, national data on differences in traffic stops at night vs. daytime suggests that the warning data and the very large differences in arrests between African Americans, and Hispanics/Latinxs compared to Whites are race related. The Austin data itself tell a similar story. Discretionary vs. non-discretionary stops resulting in citations or arrest in Austin suggests racial profiling (Goff, Obermark, LaVigne, Yahner, & Geller, 2016). Findings (shown in "Racial Profiling A") indicate higher officer discretionary stops and arrests for African American than White or Hispanic/Latinx drivers. Finally, data on stops, searches and resulting search/findings suggest race is a significant factor. Findings from APD's Racial Profiling Report indicate that traffic stops resulting in searches are higher for African Americans and Hispanics/Latinxs than Whites, relative to the percent driving age. Further the 4% difference in search/finding rates between African Americans and Whites does not explain the 41% difference in searches. Though less pronounced, the findings are similar for Hispanics/Latinxs vs.

Racial Profiling A: 2018 Percent of Racial/Ethnic Groups Profiled in Relation to Percentage in Population



*Data from Joint Report on Racial Profiling Charts 1, 2, 3 & 4

Whites. In addition, the Austin data from Goff and his colleagues (2016) indicate a higher search rate for African Americans then young Hispanics/Latinxs relative to Whites (more so when the race was known) but similar search/finding rates for the three groups.

As a final note in this profiling section we show below in the figure that traffic stops have risen over the years for African Americans and Hispanics/Latinxs.

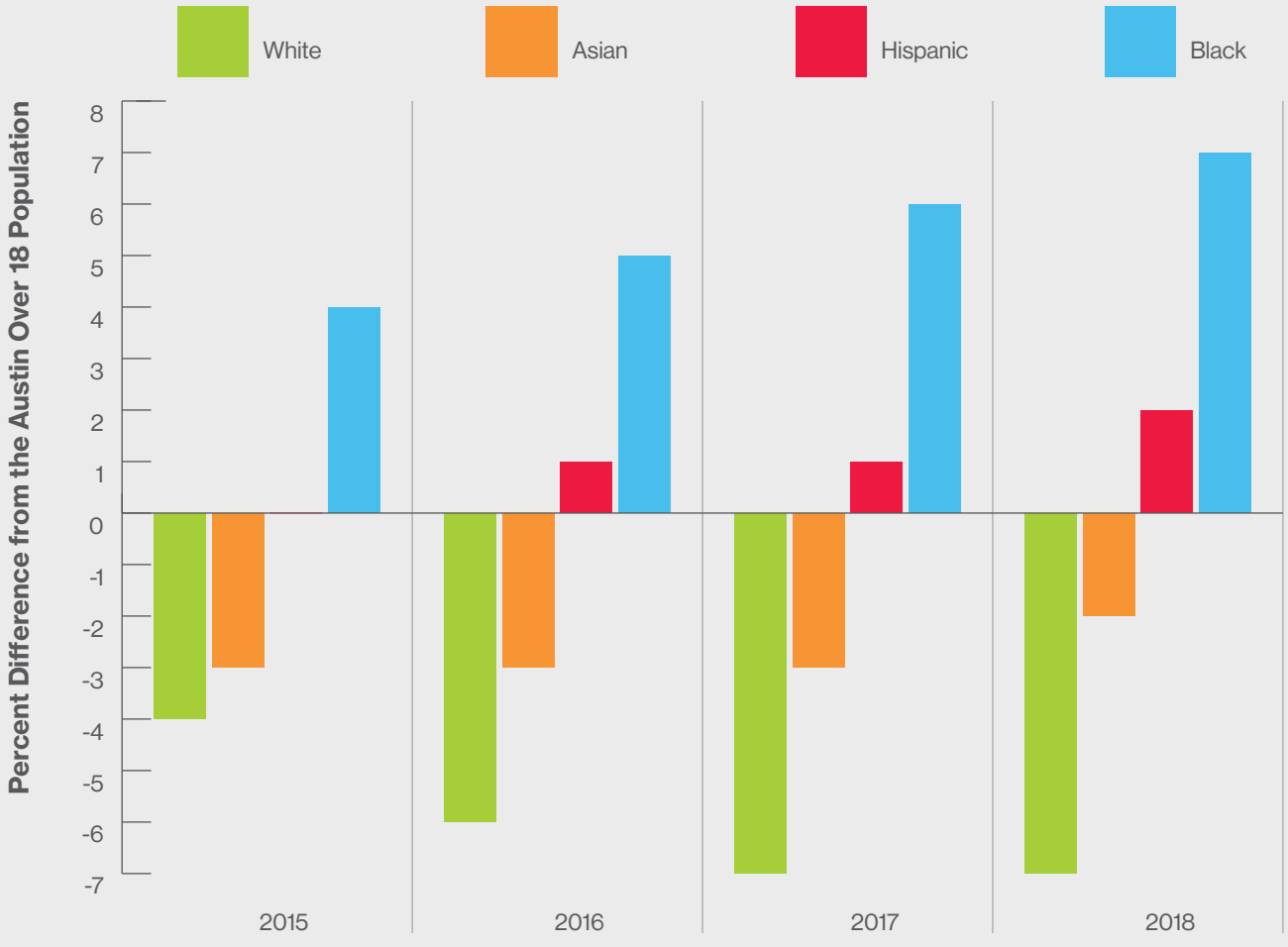
Overview of Recommendations

- Acknowledge that racial disparity exists and is worsening.
- Gain community trust and decrease racial disparity in all aspects of the report (traffic stops, arrests, citations, searches, use of force) yearly to arrive at zero racial disparity by 2023.

National Data

A large nationwide study is consistent with the Austin data and provides more context. Pierson and his colleagues (2020) found that African Americans were more likely to be pulled over for a traffic stop than Whites (over 100 million stops were assessed), yet this difference disappeared at night (the darker the sky, the less the disparity). Further, searches occurred less often for Whites, though they were more likely to be found with drugs than African Americans and Hispanics/Latinxs. Interestingly, where and when marijuana

Racial Profiling B: Traffic Stops by Race/Ethnicity 2015-2018



Data from Joint Report on Racial Profiling Report Chart 1

had been legalized for recreational use, the search threshold was higher for Whites. Other studies have found similar results for stops, searches, results of searches, and arrests (see references at the end for the original article or the policing and profiling link in a Balco 2020 article in the Washington Post for more information).

Key Observations/Comments from Interviews

- Most executive staff/management at APD are aware of the racial profiling data and acknowledged these disparities existed and are worsening.
- A small number of officers indicated that they had not seen instances of racism at APD and when asked about profiling specifically, thought that officers making traffic stops were doing so appropriately.
- In recruiting, there are those who look for ways to disqualify people. They take pride in ruling them out. They are comfortable making disparaging comments about women and Blacks. This has been going on for a long time.
- See APD Response to Racial Profiling below for citizen responses and more APD responses.

Responses to the Report

Response 1

January 14, 2020, Police Chief Manley submitted to City Manager Cronk, a memorandum that "unequivocally acknowledged that racial disparities are prevalent throughout many aspects of our City, including police enforcement actions."

This document listed the steps that had been taken to address the disparities within APD's purview over the last five years. Five of these steps addressed broad categories of collaborative improved analyses of disparity data, the use of available analytic frameworks and technologies (e.g., body cameras), and obtaining feedback from the community. Three addressed training, noting the use of implicit bias training for new recruits, hiring an expert to review the training, and improving diverse recruiting. Four addressed police profiling, improved policies concerning the use of force de-escalation and traffic enforcement. Three steps also addressed publishing an annual profiling report, contracting with an expert on racial profiling, the reduction of discretionary arrests, and the monthly workgroup with community members to explore disparities and enforcement actions.

Response 2

April 2, 2020, City Manager Crook responded to the Director of Police Oversight, Muscadin, Chief Innovation Officer O'Connor, and Chief Equity Officer, Oaks. The Memorandum and Power Point was in regards to gathering community input on the January 2020 Joint Report: Analysis of APD Racial Profiling Data. It was attended by 56 community members, 20 city staff, and 10 APD officers. The event began with a panel and presentation of the report by the authors and Chief Manley in a question and answer format. Following this, attendees were divided into five small groups for a facilitated discussion.

In general, community members were not surprised by the findings in the report because they fit with their experiences with the police in Austin. But they were surprised, discouraged, and saddened by the increasing disparity trend over the years in the report (see Racial Profiling B above). They also asked for additional data to help illuminate the reasons for the outcomes in the report and additional demographic information (a full listing of community feedback can be found by clicking the link on page 1 of the memorandum and by viewing the Power Point presentation associated with it). The community addressed several ways in which they wanted APD accountability: (1) **Acknowledgment** of the problem without being defensive, (2) **Commitment and Action** to make a change in accountability with some urgency, (3) **Structural Change and Community Decision Making,** specifically the need for community involvement in decision making, changing policy, a citizen's panel, and evaluating individual officers, (4) **APD Organizational Changes** aimed at holding leaders and individual officers accountable by having a monitoring system and real consequences for their actions, (5) **Budget** consequences if steps are not taken to address the racial disparities in the report, and (6) **Increased Transparency** from APD, the Office of Police Oversight, and the City of Austin.

Community members also provided input on training processes, the impact of mental health on the community, the importance of community involvement in decision making, and the need to prioritize the expertise of those who had lived the experience of police profiling. Finally, they requested actionable next steps for implementation and accountability.

This same memorandum requested that APD provide a written public response, acknowledge the existence of racial disparities, and align recommendations with community feedback.

They are as follows (Exploring best practices and training will be addressed in subsequent sections of this report.):

- Acknowledge that racial disparity exists and is worsening.
- Acknowledge that the methodology previously used omitted the context of proportionality and therefore was an incomplete analysis. This resulted in a perception that a trend of disparity did not exist.
- Acknowledge that race plays a major role in who is stopped by the police, searched, and for whom discretion is used favorably or unfavorably.

Response 3

April 22, 2020, Chief of Police Manley provided a response to recommendations through a detailed memorandum. The responses to recommendations 1-7 regarding racial profiling is reported in full below. The responses to recommendations 8-14 are more related to training and are reported in that section.

The purpose of this memorandum is to provide responses to the recommendations outlined in the joint report, as requested by the members of the Judicial Committee during its meeting on February 10, 2020. The Department's initial response, as well as the studies and reports referenced therein, provides additional context to this memorandum.

- *Recommendation 1: Acknowledge that racial disparity exists and is worsening.*

  The Austin Police Department consistently and unequivocally acknowledges that racial disparities exist throughout aspects of our city, including police enforcement actions. Accordingly, the Department has readily taken many steps to address the disparities within APD's purview over the past five years, as detailed in the January 14, 2020 response. Racial disparities have persisted despite these efforts, and the widening of certain gaps has raised additional concerns that demand further attention and analysis.

- *Recommendation 2: Acknowledge that the methodology previously used omitted the context of proportionality and therefore was an incomplete analysis. This resulted in a perception that a trend of disparity did not exist.*

  The primary purpose of APD's annual racial profiling report is to comply with state legislative mandates that require the reporting of specific data. Proportionality assessments are not compulsory. However, recognizing the importance of such information, APD collaborated with the Center for Policing Equity to conduct a comprehensive analysis of the racial disparities manifested in the Department's enforcement actions. The report was the first to apply the National Justice Database's independent analytic framework to police data made available through President Obama's Police Data Initiative, Measuring Fairness in the Austin Police Department. That report is posted alongside the Department's racial profiling reports on the City's website.

- *Recommendation 3: Acknowledge that race plays a major role in who we stop, search, and for whom we use discretion favorably.*

  The Department acknowledges that the outcomes of many police activities result in racial disparities. Additional data and analysis are necessary to determine how officer discretion, Departmental procedures, and societal factors contribute to these disproportionalities.

- *Recommendation 4: To gain community trust, proportional racial disparity in motor vehicle stops, arrests, searches, field observations, warnings, and citations should be zero.*

  The Department is committed to reducing racial disparities to zero, particularly disparities that are the result of officer discretion or inefficient police practices.

- *Recommendation 5: The official comprehensive analysis of racial profiling shall be conducted and released by the City of Austin Office of Police Oversight, although state-mandated reporting may continue under the purview of the Chief.*

  The Department will continue to release its state-mandated racial profiling report on an annual basis and welcomes the Office of Police Oversight's independent analysis and insight, in the manner the City Manager deems necessary and appropriate.

- *Recommendation 6: In order to uphold data integrity, accuracy, and transparency, officers should verify the racial and ethnic*

identity with people they stop. The verified data should be documented in officer reports and be published in the Racial Profiling data sets on the City's Open Data Portal.

In accordance with departmental procedures, Officers are required to document the race and ethnicity of the individuals they stop. The City has contracted with Dr. Alex Del Carmen, an expert on racial profiling and discrimination, to regularly audit the Department's racial profiling data to ensure accuracy in data collection and reporting. The traffic stop data, which includes race, is published in the racial profiling datasets on the City's Open Data Portal.

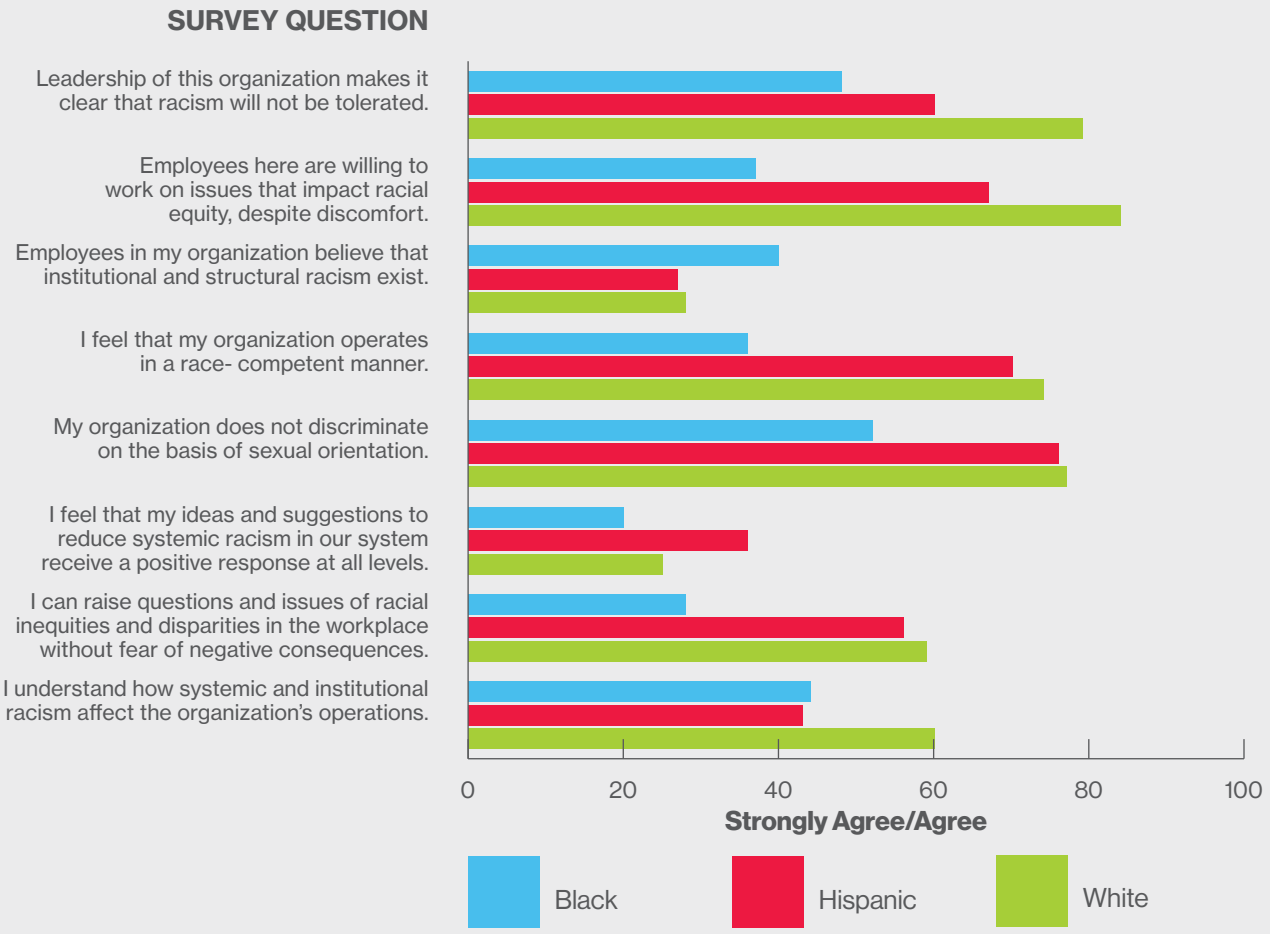
- *Recommendation 7: Analyze and report on the operational inefficiencies and costs that disproportionate racial disparities create by the second quarter of the fiscal year 2020 and provide to the City Manager and Council.*

Currently, the Department is not staffed or equipped to quantify and analyze this data but would readily collaborate with the City Auditor's office or another entity, at the direction of the City Manager.

Survey Data

The results of the questions on attitudes toward race and profiling showed generally positive results (averages ranged from 2.75 to 4.08 on a five-point scale. See Appendix A). However, when broken down by race and ethnicity, differences emerged and are

Figure 2: Attitudes Toward Race by Race/Ethnicity



shown in Figure 2. African Americans, compared to Hispanics/Latinxs and Whites, had the least agreement on every question concerning APD's understanding of how institutional racism affects the organization, feeling free to raise issues concerning racism without consequences, getting a positive response to their ideas and concerns, discrimination on the basis of sexual orientation, the organization operating in a race conscience manner, willingness to work on racial issues, and the tolerance of the organization toward racism. Women showed the same pattern of less agreement relative to men. Here again, these findings for African Americans and Women reflect the overall findings of this Report.

An additional observation from the survey is that across race and ethnicity, a low number of staff felt their ideas and suggestions for reducing systemic racism at APD were received positively. African Americans also responded higher to the question regarding employee beliefs that institutional and structural racism exist in APD.

Police Use of Force and Shootings

Austin Data

Goff and his colleagues (2016) also report data on use of force. The data indicate that the incident rate of use of force is greater for African Americans than Hispanics/Latinxs or Whites. The rate per 1,000 citizens ranges between .35 and .25 over the year for African Americans and below .10 for Hispanics/Latinxs and Whites over the year. The findings for the rates of use of force severity are also disparate between African Americans and Hispanics/Latinxs and Whites.

Of even more importance is that these researchers included neighborhood and demographic characteristics, crime rate, income, and percentage of African Americans and Hispanics/Latinxs in these neighborhoods in the models. Findings showed that residents in Austin neighborhoods with a higher percentage of African American or Hispanic/Latinx residents, those in poverty, and neighborhoods with higher crime rates, had disproportionate force and severity of force used upon them. When these possibilities other than race were adjusted statistically, African American and Hispanic/Latinx residents still experienced higher rates of use of force. The Austin Police Departments Research and Planning Unit (2017) also produced data on use of force (along with other measures). In this case as well, when the use of force from 2014 to 2016 by race and ethnicity was compared to the population, African Americans and Hispanics/Latinxs had disproportionate force used upon them relative to Whites. Control variables such as crime, poverty and neighborhood were not used. Officer involved shootings (OIS) do not occur frequently within APD (Officer Involved Shooting Report, 2018). In 2018 there were twelve incidents of officer involved shootings. Among the 12 shootings, over half were found to have a mental illness component. Five of the twelve (OIS) incidents resulted in fatalities. All five suspects were African Americans or Hispanics/Latinxs.

National Data

Police shootings and use of force evidence is similar nationally. Edwards, Lee and Esposito (2019) report in the Proceedings of the National Academy of Sciences that the police shooting database indicates..."that between 2013 and 2018, Black men were about 2.5 times more likely than White men to be killed by police, and that Black men have a 1-in-1,000 chance of dying at the hands of police. Black women were 1.4 more times likely to be killed than White women. Latino men were 1.3 to 1.4 times more likely to be killed than White men. Latina women were between 1.2 percent and 2.3 percent less likely to be killed than White women." Further, several findings in different cities in the U.S. have found that force is more likely to be used against African Americans than Whites.

Key Observations/Comments from Interviews on Use of Force

- No accountability is required for not using body cams.
- The department has an "us versus them" mentality and thinks of some communities as adversarial.

Recommendations on Police Shootings and the Use of Force by the Office of Police Oversight

- Increase the OPO access to OIS shooting incident data.
- Publish annual reports related to OIS incidents.
- APD should acknowledge and address:
  - Number of OIS incidents involving a mental health component
  - The fact that only Blacks or Latinxs were the subject of fatalities caused by police
  - The fact that the majority of OIS incidents involved people from the Hispanic/Latinx community

  - › The fact that "less lethal" force was only used in one incident prior to deadly force

- Increase education for patrol officers on de-escalation, response to resistance, and crisis intervention.
- Ensure mental health response training, policies and procedures follow best practices and address shortcomings.

Survey Data

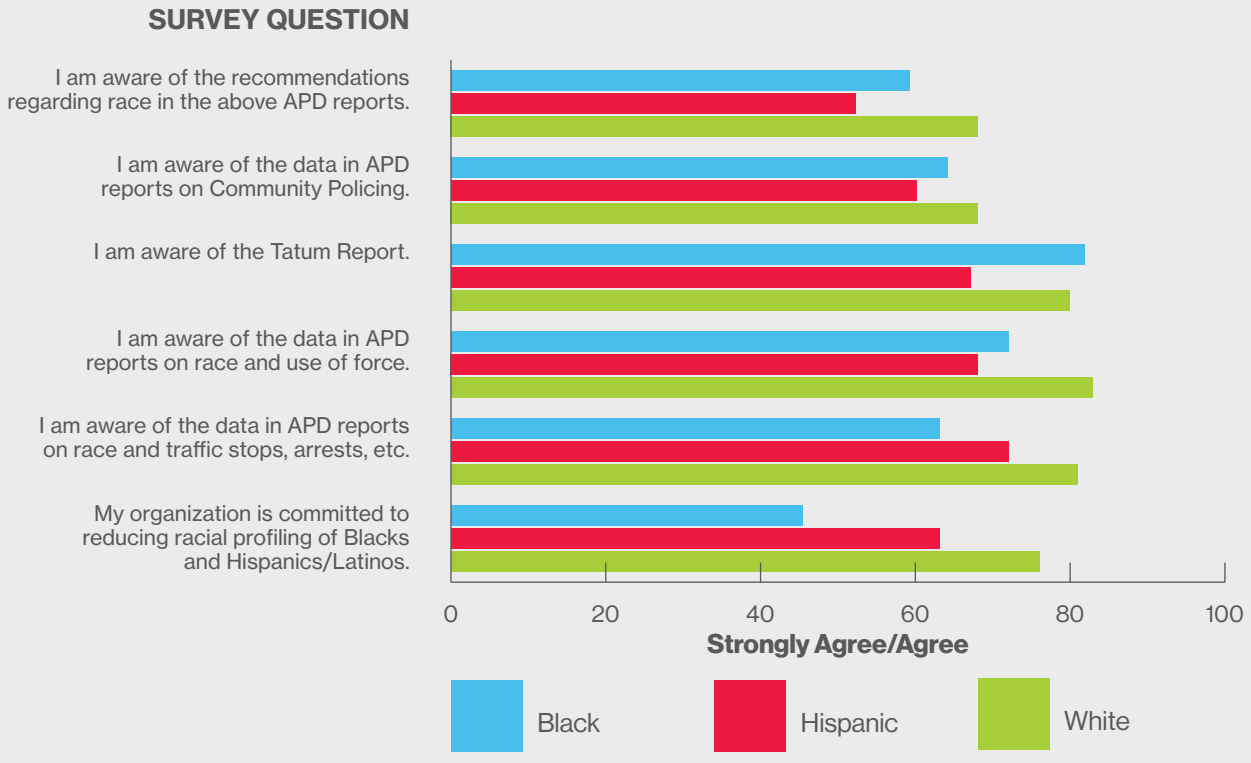
This section of the survey relates to the awareness of APD data in this report. The questions are shown in Figure 3. Generally all participants in the survey report a high level of awareness of the Tatum Report, and similar awareness of community policing. Of note is that African Americans are slightly more aware than Whites of the Tatum Report, which could speak to seeing their concerns documented in the report. They also speak to the overall findings of this Report. White respondents showed the highest level of awareness of the remaining questions shown in the graph. Finally, civilians were not as aware as sworn employees.

Police Training

Austin Data

The Training Academy is eight months long. Dr. Villanueva (2020) provides a review of the Training Academy and a framework for her analysis. It is referred to as a Strengths, Weaknesses, Opportunities and Threat analysis (SWOT). Strengths include organizational leadership, the hierarchical structure producing stability, the culture, though paramilitary, is viewed as none-the-less informal, and the movement toward more ethnic and racial diversity and inclusivity. Parts of the curriculum (currently under review) and teaching effectiveness are considered strengths as well. The diligent adherence to difficult scheduling

Figure 3: Data and Reports Awareness by Race/Ethnicity



and compliance with requirements and standards are listed as strengths. Instructors are viewed as well prepared and organized. Discussed later in this document, some findings do not coincide with the interviews that were conducted for the present report.

Weaknesses were found in the organizational structure, culture, curriculum, and teaching effectiveness as well. Process improvement is needed around a variety of areas of communication, the organization of course material, and the scheduling and course alignment. These were found to be weaknesses of the organizational structure. In the area of culture, weaknesses were noted in the paramilitary training format in that it leads to high drop-out rates, less attention to different learning styles, and inconsistency with a community policing philosophy. Diversity among the faculty and teaching methods were also noted as weaknesses and the current curriculum is being reviewed. Teaching effectiveness weaknesses were noted. Namely, trainers' job descriptions do not include any expectations of training in teaching methods or evaluations of the effectiveness of those methods. Further, resources regarding effective teaching methods are unavailable. Finally, the 80% passing standard along with related practices and procedures should be reviewed.

Opportunities include adopting an adequate Learning Management System, moving away from a paramilitary culture and warrior mindset to a more guardian view that is consistent with community policing and the value "to protect and to serve." Various types of training are suggested along these lines.

The issue of race and ethnicity in policing is regarded as a cause of concern and a number of efforts are underway to address this issue. The courses currently taught are under substantial review about content of teaching, content of materials, current scholarly literature, and effective delivery of the material. Meeting the diverse needs of both the community and the organization are paramount. Noting that women and faculty of color are under-represented in the academy, recruitment will be closely examined.

Since many of the existing courses are mandated by law, courses will be reviewed, and a series of evidenced-based practices will be included to help officers navigate encounters with community members while helping the officers build emotional regulation and strength tolerance. To that end, academy instructors will need the training, experience, and resources necessary to achieve teaching excellence.

Threats listed are (1) socio/political climate and political unrest, (2) negative police/community relations, (3) shortage of recruits, (4) economic/financial/budgetary constraints, (5) internal morale, (6) internal discord, (7) negative perceptions by the public/media, and (8) lack of real or perceived support.

National Data

The Governing data website provides data on the demographic composition of police departments in the United States. According to the data found in the reports on the site, Whites are overrepresented while African Americans and Hispanics/Latinxs are underrepresented in varying degrees in the majority of larger police departments (race and ethnicity data on this website can be reviewed city by city). Further, according to a survey by Crime and Law Enforcement (2019), women make up only 12.6 % of full-time police officers in the United States. As the President's Task Force on 21st Century Policing (2015) points out, a tolerance and understanding of these racial and ethnic groups as well as the LBGTQ community is essential to improved training (and of course, recruitment).

Dr. Villanueva Recommendations

- Transform para-military structure to Adult Learning model
- Incorporate implicit bias evaluations into recruitment process
- Increase diversity in teaching faculty
- Include simulations and role plays that pertain to difficult cultural or racial situations
- Establish a community placement opportunity for cadets to begin building relationships with community

Key Observations/Comments from Interviews Regarding Training and Advancement

There is no mechanism for cadets to complain above their Instructor/Counselor (IC) even if the IC is the person who abused them.

- Resignations/firing Black officers after training
- Insufficient mental health training
- Insufficient training on trauma-informed care

- Numerous former cadets stated that they were verbally, psychologically, and physically abused in the academy, and that they observed the same for their classmates.
- Certain cadets are targeted and pressured relentlessly, then asked to resign or be fired. In the latter case, they would likely be banned from future law enforcement jobs in the whole state.
- The academy curriculum glosses over the subject of diversity, taught by all-White instructors.
- Academy has a high level of attrition of Black cadets
- Some Black cadets are prepared, and some are under-prepared for the academic rigor of the academy. This could be a historical failure of the school educational system, resulting in an achievement gap.
- Choice of videos in training academy promotes warrior mentality
- Cadets suffer "death by Power Point" in academy
- SWOT analysis was conducted by Dr. Villanueva, but staff did not receive feedback
- Lack of community engagement during the academy
- Questionable reasons for disqualifying cadet applications: credit score; smoking weed in high school; hairstyle
- The police department has not done a very good job of awareness of the need for racial and gender equity. Beliefs such as women cannot police have permeated the department since the 1930s.
- Some would prefer officers to be recruited and or trained in psychology and empathetic understanding.
- The academy has no specific mentorship program for African Americans that mirrors the female mentorship program.
- Marketing might attract more recruits of color.
- Most officers take a substantial pay cut to teach in the academy. They lose night shift stipends, and ability to make overtime.
- Support adding the history of policing course to the academy. What APD was doing before was inadequate regarding history of policing. The curriculum is in place for the next cadet class through the University of Texas for an 8-hour class.
- They are planning to use the Beyond Diversity curriculum from the LBJ school for their diversity training (separate from history of policing class.)
- What needs to change is militaristic training
- There is a lack of a clearly defined career path
- One individual thought there was a negative reaction to Undoing Racism training by some
- There is a need to develop a formal mentoring program led by APD for African Americans
- Training for new supervisors includes HR: Policy, Workers Comp, FMLA, Annual Performance Reviews, and so forth.
- 30 sergeants and 20 corporals are currently going through supervisor training. The class is 2 weeks, with an additional accountability class. There is no specific curriculum included on data showing the racial inequities.in APD that officers going into leadership positions should be aware of.
- For the academy, the ICs are responsible for academic support if needed.
- Every officer must have 40 hours every 2 years. TCOLE will mandate some, but other hours are at the discretion of the department. Re-certification is required every two years.
- The motto of the academy is, "I am my brother's keeper." That culture ought to shift. The highest level of diversity is at the officer level and that needs to be spread throughout the agency.
- African Americans are lacking sufficient numbers in high positions to support what some interviewees called "succession planning" to help them do well on tests for promotion which Whites and Latinos have. Rather, many stated the existence of a "good old boy network" that continues the cycle of promoting White males. For example, there are no Black Commanders and only one Black Assistant Chief.
- The videos that cadets view have a disproportionate number of Black people involved in violent crime, which not only shapes the minds of White officers, but also does something to the psyche of Black and Brown people that their own people are dangerous.
- Interviewees mentioned a lack of awareness of and sensitivity to Black history and culture in the Department. There are too many recruitment disqualifiers as well. For example, they said that Black hairstyles for men and women have been disqualifying factors in the application process. Other disqualifying factors of Black candidates, such as bad credit score; having been evicted, and having smoked weed in high school should be taken into consideration as the result of intergenerational effects of economic exploitation and racial trauma.

Community Responses to Training: (From the Responses to the Joint Report on Police Profiling)

- Include implicit bias testing in the Austin Police Department hiring process.
- For current employees, require implicit bias testing and flag high-scoring officers for appropriate intervention.
- Identify and implement bias-countering policies, practices, methods, processes, and standard operating procedures to mitigate bias.
- Include the comprehensive Racial History of Policing curriculum in the cadet training academy and adapt it into required training for existing officers, at all ranks, annually.
- Follow the guidelines for racial equity training established by the Equity Office. The Equity Office and Office of Police Oversight shall be consulted for final selection of official racial equity training for officers at all ranks.
- Develop a method to provide racial equity training on an ongoing basis (a minimum of 40 hours per year) for all staff, sworn and civilian, in the department, annually, during every year of service.

Response 3

(continued from page 8. April 22, 2020, Chief of Police Manley remaining responses to recommendations in the Joint Report on Racial Profiling: these 7 remaining responses are placed here because they relate more to training)

- *Recommendation 8: Explore promising practices from Oakland and Nashville that use a scoring mechanism for disproportional behavior to identify at-risk officers and assign appropriate interventions and use in the determination of promotions.*

  The Department agrees the City should invest in sophisticated oversight tools that are more adept at identifying, flagging, and tracking at-risk officers in order to facilitate timely and effective interventions.

- *Recommendation 9: Include implicit bias testing in the Austin Police Department hiring process.*

  Based on the best available evidence from subject-matter experts on bias, the Department operates with the understanding that every applicant will have implicit biases. Therefore, the Department administers training to ensure all employees are aware of their biases, promulgates explicit policies to set clear expectations that bias-based actions are intolerable, and utilizes oversight mechanisms to identify inappropriate behavior.

- *Recommendation 10: For current employees, require Implicit Bias testing and flag high scoring officers for appropriate intervention.*

  As stated above, the Department has mechanisms in place to identify and rectify inappropriate behavior. Additionally, the Department is open to exploring proven, evidence-based testing methods that are capable of effectively supplementing current training, policies, procedures, and audits.

- *Recommendation 11: Identify and implement bias-countering policies, practices, methods, processes, and standard operating procedures to mitigate bias.*

  The Department recommends the City contract with a suitable academic institution to conduct an independent, comprehensive, and evidence-informed assessment of the Department's enforcement practices, cultural norms and customs, training, accountability procedures, and any resulting racial disparities. A similar partnership between the City of Oakland and Stanford University yielded promising results and provided a roadmap for creating community-based strategies aimed at addressing the unique historical and cultural challenges of a city: Data for Change & Strategies for Change.

- *Recommendation 12: Include the comprehensive Racial History of Policing curriculum in the cadet training academy and adapt it into required training for existing officers, at all ranks, annually.*

  The Department intends to incorporate the Racial History of Policing training in future cadet class and is determining the best approach and frequency for administering the training to existing officers.

- *Recommendation 13: Follow the guidelines for racial equity training established by the Equity Office. The Equity Office and Office of Police Oversight shall be consulted for final selection of official racial equity training for officers at all ranks.*

The Department is committed to following the established guidelines for racial equity training and welcomes input from the Equity Office and Office of Police Oversight.

Recommendation 14: Develop a method to provide racial equity training on an ongoing basis (a minimum of 40 hours per year for all staff, sworn and civilian, in the department, annually, during every year of service).

The Department is eager to provide additional racial equity training for all employees in an effective, feasible, and sustainable manner. The Department will consider this recommendation as part of the FY21 budget process.

Community Policing

Austin Data

One of the goals of community policing involves citizens having an active role in policing. In Austin, that translates to District Representatives and other support positions to enable citizens to have a role in supporting and working with the police: Community meetings and gatherings are attended, foot, bicycle, and horse patrol are used in targeted areas (especially the entertainment district). Currently, that role may shift somewhat with the reallocation of resources.

Two Reports were reviewed that address community policing in Austin. The first, Community Policing Advancement in Austin (2020) was a response to the staffing report needs assessment provided by the Matrix Consulting Group and describes Austin's community policing scope of work. The response provides several recommendations too numerous to list here. However, those related to the nature of the current report are the inclusion of pedestrian stops and field interviews in the yearly police profiling report, developing a marketing plan for community policing, greater funding, developing an evaluation plan, and performance measures.

Additionally, the report recommends developing a recruiting and training plan for community policing, revising job classifications that reflect community policing principles, the creation of neighborhood portfolios, consideration of a field training program, supporting neighborhood events, consideration of non-English speaking populations, and the consideration of officer volunteers and community youth.

Community Policing Matrix Report 2020 Key Recommendations

- Develop Community Policing theme that highlights the philosophy as a major focus of Academy training
- Send exit interviews of cadets and trainees directly to HR
- Explore the use of problem-solving based learning methodology
- Produce a recruiting video more aligned with community policing

Community Policing/Advancement in Austin 2020

APD's response to the Community Policing Matrix Report can be found on pages 31-36 of the report itself. The column on the right indicates which responses have and have not been implemented.

The second report is by the City Auditor (2020), and is entitled, The Impact of Community Policing Efforts. The report provides two types of analyses. The first is an analysis of the time officers have available to engage with the community (Figure 4 below).

As shown in Figure 4 (next page), Officers' uncommitted time when they are not responding to a call can be less than 5 minutes per shift during which they also check e-mail, write reports, read policy updates, and engage in other tasks. Clearly this is not an ideal situation. The second analysis is an employee survey conducted to determine if perceptions had changed since the initial matrix was conducted in 2016. Results were mixed and can be found on pages 13-16 of the report. The percentage change between pre/post is shown on the right side of the page.

National Data

A variety of opinions exist about the value and effectiveness of community policing, dependent in many instances on the makeup of the community. Nationally, the population is 72 percent White, and 13 percent Black. And the US police force is 75 percent White and 12 percent Black. Asians and Latinos have smaller numbers of representation nationally (Vitale, 2018). From a macro perspective, this means that many White officers who live in White communities are patrolling non-White communities, where they don't live. The old school effective models of community policing entailed officers living in the areas where they work and intermingling with their neighbors. For this reason, Vitale (2018) argues that community policing today does little to empower communities, reduce over-policing in marginalized communities, or to reduce crime.

Figure 4: Estimated Available Time Community Policing: City of Austin Audit Report 2020



The President's Task Force on 21st Century Policing (2015) is favorable toward community policing done correctly. Crowl (2017) provides a review of the evidence surrounding Community Policing over the years. He enlists only studies with quality methods in his results. He notes that although Community Policing has many definitions and objectives, it attempts to address the conditions that enable public safety such as crime, social disorder, and fear of crime (Crowl, 2017), often in poorer communities of color. To accomplish this, it attempts to empower citizens to have an active role in working with the police. In the Crowl (2017) review, he shows that Community Policing has been found to be effective in high quality studies in reducing fear of crime (56.3% of the studies reviewed), citizen satisfaction (66.7% of the studies reviewed), fostering police legitimacy (77.8 % of the studies reviewed), improving job satisfaction (90% of the studies reviewed) and to some degree crime reduction (only 18.6% of the studies reviewed). These two views above are deserving of more attention, considering the comments below.

Key Observations/Comments from Interviews

- Poor communication with the community
- Community Policing not practical with current workload on patrol
- It would be good to have the same spirit of care for fellow officers to be infused into the communities they serve.
- Similar to interviewees, views that communication with the community in general is poor, community engagement during the academy was also lacking. Rather, interviewees said that community representatives spoke in class, and cadets prepared follow-up written reports, without ever actually going to communities.
- A number of interviewees elaborated on their perspective of the shortcomings of Community Policing in Austin. Black and Latinx officers noted that the current climate of mistrust for police in general puts them at a disadvantage with their own people when they are seen with the badge, gun, and blue uniform. Consider an example of parking on the street. Officers of

color who patrol in poor communities of color are aware of the residents saying that they are skeptical of the officer's sincerity for their well-being when asking them to comply with laws in their communities, when they know that in a nearby White neighborhood, residents are allowed and even encouraged to do the same non legal actions with no consequences, such as parking on the street. Since trust—a prerequisite for the development of a healthy relationship—is lacking in this example and others, trust will need to be restored in advance of effective community policing.

- Assignment to specialty units like community policing is not a fair process for African Americans.
- Community policing should be accomplished through true partnership with the community and a sense of restorative justice. That is, bringing together people harmed, and those responsible for harm and harm prevention in a safe and respectful way.

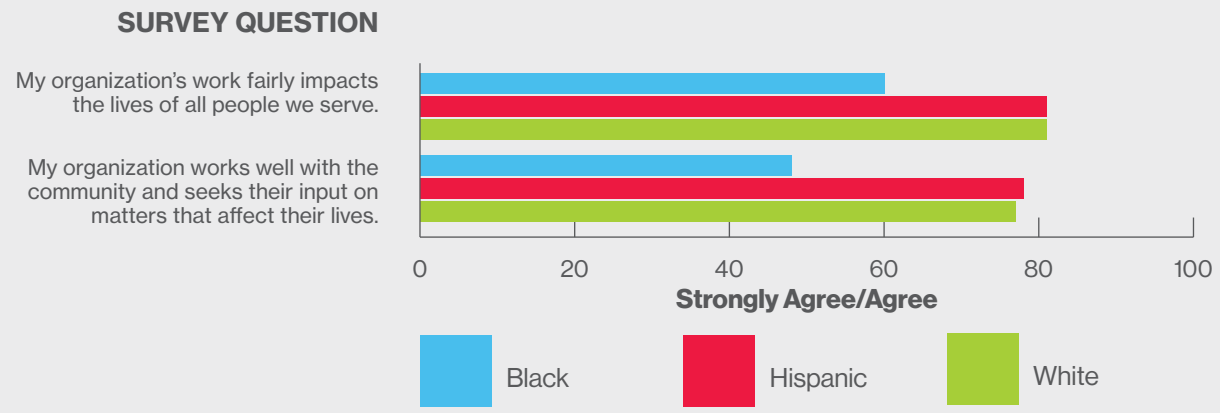
Survey Data

The two questions for this part of the survey are shown in Figure 5 below. Clearly the workforce values the communities they serve (means range from 4.07 to 4.14 on a 5-point scale—Appendix A). Questions were analyzed by race, ethnicity, and gender. Race is shown in the figure. Generally, it shows that a majority of respondents agreed with both statements, though African American are less likely to agree. This is again consistent with the overall findings of this Report.

CONCLUSION

This report provides key findings, recommendations and responses to the JJC team's review of multiple reports related to racial inequities that exist in the culture of APD, and the impact on internal and external stakeholders. Additional information from surveys, interviews with sworn and civilian staff, community members, and participants in the Groundwater Analysis workshop, provide a comprehensive analysis of the trends that speak to a long history of institutional and structural racism in the APD culture. These findings have informed the recommendations and beginning road map, that if implemented, have implication for beginning a journey towards creating an APD anti-racist institutional culture. The review of the reports, interviews and survey data all indicate that change in the Austin Police Department requires an immediate response. The Texas Model serves as the framework for the recommendations outlined in this report. It has proven to be effective in reducing racial inequities and improving outcomes for all populations. This is the ultimate goal of anti-racist work.

Figure 5: Community Policing by Race/Ethnicity



REFERENCES

Balco, R. (2020). There is overwhelming evidence that the criminal justice system is racist. Here's the proof. *The Washington Post,* June 10.

Crowl, J.N. (2017) The Effect of Community Policing on Fear and Crime Reduction, Police Legitimacy and Job Satisfaction: An Empirical Review of the Evidence. *Police Practice & Research 18,* no. 5 449–462.

DeMatthews D, (2016). *Effective Leadership is Not Enough: Critical Approaches to Closing the Racial Discipline Gap.* The Clearing House: A Journal of Educational Strategies, Issues and Ideas. Volume 89, 2016 - Issue 1. n1 p7–13.

Goff, P., Obermark, D., La Vigne, N., & Yahner, J. (2016). *The Science of Policing Equity. In Policy File.* Urban Institute.

James, J., Baumann, D. J., Rodriquez, C., Craig, S., & Kathan, S. (In Press). Creating Comprehensive System Reform to Reduce Disproportionality and Disparities: The Texas Community Engagement Model. In *Racial Disproportionality and Disparities in the Child Welfare System, Child Maltreatment Series,* Vol. 11, Alan J. Dettlaff (Eds): 978–3–030–54313–6, 466762_1_En, (Chapter 20)

Brown. K. M. (2006). Leadership for Social Justice and Equity: Evaluating a Transformative Framework and Andragogy. *Educational. Administration Quarterly, Volume 42 Issue 5,* December, page(s): 700–745

The Matrix Consulting Group, (2016). *Final Report on Community Policing.* Prepared for the Austin Police Department https://www.austintexas.gov/sites/default/files/files/Police/Austin_Community_Policing_Report_7-21_-_Final.pdf

Office of Police Oversight, Office of Innovation, Equity Office (2020). Joint Report: *Analysis of APD Racial Profling Data.* Austin, Texas

Pierson, E., Simoiu, C., Overgoor, J. et al. (2020) A large-scale analysis of racial disparities in police stops across the United States. *Nat Hum Behav* 4, 736–745 https://doi.org/10.1038/s41562-020-0858-1

President's Task Force on 21st Century Policing (2015). *Office of Community Oriented Policing Services.* Washington D.C, Department of Justice, May

Merriam, S. B (2008) *Third Update on Adult Learning Theory: New Directions for Adult and Continuing Education, NO. 119.* Jossey-Bass, San Francisco, CA, 2008, 96 pages.

The Tatum Law Practice (2020). *Austin Police Department Independent Investigation Fact Investigation*

Taylor, Edward W. *Transformative Learning Theory. New Directions for Adult and Continuing Education,* n119 p5–15 Fall 2008. http://www.anitacrawley.net/Resources/Articles/TaylorTransformative%20Learning%20Theory.pdf

Villanueva, S. (2020). *Review Analysis and Strategic Plan.* Austin Police Department Training Academy. Austin, Texas

Vitale, Alex. 2018. *The End of Policing.* London, England: Verso Books.

Racial Inequities and Institutional Racism:

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November 2020

APPENDIX A:
APD Climate Assessment Survey

APPENDIX A: APD CLIMATE ASSESSMENT SURVEY

STATEMENT	STRONGLY AGREE	AGREE	NEITHER AGREE nor DISAGREE	DISAGREE	STRONGLY DISAGREE	TOTAL % (N)	AVE
Internal Organization Issues (1,2,3,17,18,20)							
1. I am satisfied with the culture and climate of my workplace.	11.96% (N=100)	29.55% (N=247)	12.92% (N=108)	23.33% (N=195)	22.25% (N=186)	85.13% (N=836)	2.86
2. I received adequate training in racial equity when I began employment here.	44.22% (N=371)	26.10% (N=219)	14.30% (N=120)	10.01% (N=84)	5.36% (N=45)	85.44% (N=839)	3.94
3. The process for advancement and promotion at APD is fair.	22.38% (N=188)	32.62% (N=274)	19.88% (N=167)	15.36% (N=129)	9.76% (N=82)	85.54% (N=840)	3.42
17. I am aware of the process of reporting a complaint through the Office of Police Oversight (OPO).	37.74% (N=314)	41.71% (N=347)	10.70% (N=89)	8.17% (N=68)	1.68% (N=14)	84.73% (N=832)	4.06
18. I feel comfortable reporting my concerns to the Human Resources Department.	28.88% (N=240)	31.41% (N=261)	17.09% (N=142)	13.12% (N=109)	9.51% (N=79)	84.62% (N=831)	3.57
20. Rules regarding employee misconduct are fair and equitable for all employees.	18.03% (N=150)	23.20% (N=193)	15.63% (N=130)	22.72% (N=189)	20.43% (N=170)	84.73% (N=832)	2.96
Attitudes (Gender, Race, Sexual Orientation) 4,5,6,7,8,9,13,14,15,16							
4. My organization treats women fairly.	42.55% (N=357)	32.90% (N=276)	13.35% (N=112)	7.63% (N=64)	3.58% (N=30)	85.44% (N=839)	4.03
5. I understand how systemic and institutional racism affect the organization's operations.	25.12% (N=206)	30.61% (N=251)	28.41% (N=233)	5.98% (N=49)	9.88% (N=81)	83.50% (N=820)	3.55
6. I can raise questions and issues of racial inequities and disparities in the workplace without fear of negative consequences.	26.59% (N=222)	27.54% (N=230)	21.92% (N=183)	14.13% (N=118)	9.82% (N=82)	85.03% (N=835)	3.47
7. I feel that my ideas and suggestions to reduce systemic racism in our system receive a positive response at all levels.	13.78% (N=113)	13.54% (N=111)	57.68% (N=473)	8.90% (N=73)	6.10% (N=50)	83.50% (N=820)	3.2
8. My organization does not discriminate on the basis of sexual orientation.	47.66% (N=397)	27.01% (N=225)	15.37% (N=128)	6.36% (N=53)	3.60% (N=30)	84.83% (N=833)	4.09
9. I feel that my organization operates in a race-competent manner.	37.30% (N=310)	31.41% (N=261)	17.21% (N=143)	9.99% (N=83)	4.09% (N=34)	84.62% (N=831)	3.88
13. Employees in my organization believe that institutional and structural racism exist.	5.90% (N=49)	21.33% (N=177)	34.70% (N=288)	17.95% (N=149)	20.12% (N=167)	84.52% (N=830)	2.75
14. Employees here are willing to work on issues that impact racial equity, despite discomfort.	25.51% (N=211)	41.11% (N=340)	22.61% (N=187)	7.86% (N=65)	2.90% (N=24)	84.22% (N=827)	3.78
15. Leadership of this organization makes it clear that racism will not be tolerated.	41.08% (N=341)	28.80% (N=239)	13.86% (N=115)	9.52% (N=79)	6.75% (N=56)	84.52% (N=830)	3.88
16. Leadership of this organization makes it clear that sexism will not be tolerated.	42.67% (N=355)	29.33% (N=244)	14.66% (N=122)	8.05% (N=67)	5.29% (N=44)	84.73% (N=832)	3.96

APPENDIX A: APD CLIMATE ASSESSMENT SURVEY

STATEMENT	STRONGLY AGREE	AGREE	NEITHER AGREE nor DISAGREE	DISAGREE	STRONGLY DISAGREE	TOTAL % (N)	AVE
Data & Reports Awareness (10,21,22,23,24,25)							
10. My organization is committed to reducing racial profiling of Blacks and Hispanics/Latinos.	44.65% (N=371)	26.71% (N=222)	20.10% (N=167)	5.78% (N=48)	2.77% (N=23)	84.62% (N=831)	4.05
21. I am aware of the data in APD reports on race and traffic stops, arrests, etc.	36.82% (N=306)	43.56% (N=362)	13.24% (N=110)	5.17% (N=43)	1.20% (N=10)	84.62% (N=831)	4.1
22. I am aware of the data in APD reports on race and use of force.	36.10% (N=300)	42.48% (N=353)	13.96% (N=116)	6.14% (N=51)	1.32% (N=11)	84.62% (N=831)	4.06
23.I am aware of the Tatum report.	29.72% (N=247)	49.58% (N=412)	10.35% (N=86)	6.74% (N=56)	3.61% (N=30)	84.62% (N=831)	3.95
24.I am aware of the data in APD reports on Community Policing.	26.39% (N=219)	39.76% (N=330)	19.16% (N=159)	12.65% (N=105)	2.05% (N=17)	84.52% (N=830)	3.76
25.I am aware of the recommendations regarding race in the above APD reports.	19.61% (N=163)	43.08% (N=358)	22.38% (N=186)	11.79% (N=98)	3.13% (N=26)	84.62% (N=831)	3.64
COMMUNITY (11,12)							
11. My organization works well with the community and seeks their input on matters that affect their lives.	40.38% (N=336)	36.54% (N=304)	14.78% (N=123)	6.37% (N=53)	1.92% (N=16)	84.73% (N=832)	4.07
12. My organization's work fairly impacts the lives of all people we serve.	45.07% (N=375)	34.74% (N=289)	11.18% (N=93)	7.09% (N=59)	1.92% (N=16)	84.73% (N=832)	4.14

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APPENDIX B:
Community Engagement Model

APPENDIX B: COMMUNITY ENGAGEMENT MODEL

Community Engagement Four Stages and Steps:

Stage 1: Community Awareness and Engagement

- Making the problem visible
- Sharing the data
- Telling the story
- Enrolling community leaders
- Building local allies

Stage 2: Community Leadership

- Expanding leadership at the community level
- Communities claiming responsibility for solutions
- Community investment in efforts to address the issue
- Community-based decision-making re: strategies
- Community structures (advisory committees, steering committees) through which work is accomplished
- Engaging stakeholders who have been the biggest critics of the system as solution-builders & advocates

Stage 3: Community Organization

- Going to the community, being guided by it to learn what strengths exist, what the needs are, and bringing community members / families and youth / natural community leaders into the process
- Selection of practices that are needed from the community's perspective
- Giving community members the chance for meaningful contributions
- Operating from the premise that the community knows best
- Recognition that communities are resilient
- Grounding the work in these principles:
  - Analyzing power
  - Defining racism
  - Understanding the manifestations of racism
  - Learning from history
  - Cultural sharing
  - Organizing to undo racism

Stage 4: Community Accountability

- Defining and achieving desired outcomes and measurable results
- Everyone is a contributor to what the results should be
- Sustainability is the ultimate goal
- Communities and systems are the owners of the solutions
- Community leaders do not stay silent—they advocate
- Community accountability transcends the work of CPS and other organizations communities must be accountable to people in the community for community wellness
- Communities hold all systems accountable for the oppression they have imposed on communities, their residents, their children
- Accountability must be visible supported through written MOUs and other formal strategies, having formal networks for services

Summary Points

- Highly inclusive process
- Reliant on a facilitative leadership process of committees and other entities
- Cross-systems approach with shared values, shared resources, mutual investment in identified outcomes
- Community leaders are engaged in decisions and the commitment of resources for sustainability
- Community strengths are a strong focus

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APPENDIX C: A Groundwater Analysis of Racial Inequities

APPENDIX C: A GROUNDWATER ANALYSIS OF RACIAL INEQUITIES

"Turning the Mirror Inward"

Description

In the absence of a racial equity lens, well-meaning leaders often continue to unconsciously contribute to sustaining and often perpetuating racial inequities in the design and delivery of programs. This workshop will enhance the racial equity awareness of the participants by building a common language and understanding, of the underlying factors that contribute to racial inequities. This increased knowledge can be a catalyst for developing strategies to build more effective programs and for strengthening and transforming the culture of systems towards increased accountability in response to the needs of all populations.

The facilitators are skilled in creating a safe space for participants to discuss institutional and structural racism in the historical and current context, in a way that holds us accountable for "turning the mirror inward" to examine systemic rather than individual factors contributing to poor outcomes. This safe space creates an atmosphere for all to engage in out-of-the-box thinking that can continue to be supported through consultation with JJC, beyond the workshop.

JJC will introduce the Ground water Analysis for examining racial inequities derived from an evaluation of the Texas Model:

- Racial inequities look the same across systems
- Systems contribute significantly to racial inequities
- Racial inequities cannot be attributed to one "bad apple"
- Racial inequities are concentrated in poor communities and communities of color
- Systemic interventions and training can work to reduce disproportionality and disparities and improve overall outcomes for all populations

The workshop is designed to enhance the awareness of well-meaning and committed leaders to strengthen and transform systems and community-based organizations to better respond to the needs of all populations.

The workshop components serve as a basis for analyzing racial inequities that exist and intersect across systems such as housing, education, law enforcement, financial services, healthcare, juvenile justice, child protective services, and employment. The outcomes of services in these systems disproportionately impact poor communities and communities of color in ways that previously may not have been considered. The workshop is designed to promote a clearer understanding of the role of leadership in systems and institutions in working together and in partnership with constituents and community to understand the history of institutional and structural racism, to strengthen our collective capacity to reduce and ultimately eliminate racial inequities in outcomes and in systems responses, both of which are predictable by race, across systems and institutions.

Workshop Objectives

- Examine by race/ethnicity, the data for multiple systems, to broaden knowledge and understanding of the underlying causes of racial inequities in systems and institutions, and the deeper more systemic factors that contribute to poor outcomes for vulnerable populations.
- Increase understanding of the importance of cross systems collaborations and being in partnerships with poor communities and communities of color to examine old attitudes, assumptions, and stereotypes, that shape the lens through which children, families, and communities of color are viewed so that systems begin to work in deliberate and intentional ways to remove the barriers that contribute to racial inequities.
- Introduce new language, skills, and concepts to move toward the development and implementation of more effective interventions that can reduce racial inequities and improve outcomes for all populations served.
- Engage participants in activities and facilitate dialogue designed to help systems be more accountable for "turning the mirror inward," to examine systemic rather than individual factors of racism, contributing to poor outcomes for poor communities and communities of color.
- Understand how institutional structures and practices impact outcomes for vulnerable populations.
- Engage in a facilitated dialogue to begin to examine commonly held attitudes and assumptions that create

and sustain disproportionate and disparate outcomes for poor communities and communities of color.

- Examine data by race/ethnicity for multiple systems, to broaden knowledge and understanding of the history of institutions, and the deeper more systemic factors that contribute to poor outcome for vulnerable populations.
- Examine the relationships that exists among systems and their collective impact on poor communities and communities of color.
- Begin to develop a common understanding and language that opens the door for conversations that are critical and necessary for undoing racism.
- Discuss the importance of moving from cultural competency to racial equity and developing a common definition and language with which to begin the journey to eliminate institutional and structural racism.
- Begin to develop the language and the skills to move toward the creation and implementation of more effective interventions that will reduce racial inequities and improve outcomes for all populations served.

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APPENDIX D:
The Groundwater Analysis Workshop Technical Assistance Report

APPENDIX D: THE GROUNDWATER ANALYSIS WORKSHOP TECHNICAL ASSISTANCE REPORT

City of Austin Police Department

ACKNOWLEDGEMENT

Joyce James Consulting (JJC) would like to thank the City of Austin, Office of Equity (OOE) and Police Department (APD) that helped bring "Groundwater Analysis" training and technical assistance to APD.

The willingness of Chief Bryan Manly, his command team and other sworn and civilian staff to have open and meaningful conversations about institutional and structural racism was invaluable to the open and honest facilitated dialogue. The presence of the OOE was critical to ensuring that all phases were in alignment with the anti-racist principles embedded in that office. The voices of the community members who shared in the workshop, debrief, and strategy sessions were very powerful in shaping the recommendations included in this report. JJC feels confident that in having strong community voices at the table, a higher level of accountability exists for change within APD.

Overview

The City of Austin (City) Austin Police Department looks to transform the department's culture in ways wholly antithetical to its beginnings as a law enforcement organization. The early history of the APD (as described in the Austin History Center's Austin Police Department Guide, 2018) recounts its law enforcement beginnings in 1840 with the election of the City's first marshal. Like other marshals of the day, those in Austin held enormous power. These elected officials picked their own officers, played a part in criminal executions and were chiefly responsible for upholding city law and order including the rules or laws specifically "designed to constrain slaves' behavior." One of these laws being slave curfews. The curfews made it unlawful for slaves to be in public or gather at night; responding to the fears of whites of people of color united through their enslavement. In their role as enforcers of the law, marshals and their officers could lash a slave found out in public after curfew with up to 15 lashes.

In 1862, the structure of the APD began to change in ways that reflected different societal norms. City ordinance set up the police department and a chief of police. Then in 1871, the first African American police officers joined the APD police force. Today, the APD workforce, both sworn and civilian, is more diverse. However, internal and independent reporting point to deeply rooted and persistent signs of institutional and systemic racism—that have not and cannot be diminished simply by the passage of time.

Therefore, consistent with the department's vision for systemic changes within the department, the OOE and APD contracted with Joyce James Consulting (JJC) to provide technical assistance, "A Groundwater Analysis of Racial Inequities" (GWA) workshop and a workshop debrief and strategic planning session. The mission of JJC is to support organizations, institutions, systems and communities in developing a racial equity lens to recognize institutional and structural racism as the root cause of racial inequities in all systems and assist in creating organizational cultures that actively engage in sustainable strategies to eliminate racism.

Background

Three theories of action serve as a foundation for the JJC racial equity workshop and guide the use of pre- and post-surveys: transformative learning, critical race, and adult learning. Transformative learning is the "process of experiential learning, critical self-reflection, and rationale discourse that can be stimulated by people, events, or changes in contexts that challenge the learner's basic assumptions" (Brown, 2006). Critical race theory argues that "racism and other forms of oppression are central to the experience of people of color and dominant ideologies justify the status quo/structural oppression and must be challenged (DeMatthews, 2016)." The adult learning theory focuses on knowledge building in a way that fosters "critical reflection...essential for transformative learning" (Taylor, 2008).

Qualitative Feedback

The GWA workshop facilitated the examination of systemic transformation and participants' awareness about racial inequities and disproportionality in outcomes across multiple systems serving vulnerable populations and communities of color. In providing the APD with training and technical assistance, JJC used

its pre- and post-surveys to establish a baseline of participants' perceptions of knowledge of institutional racism and racial equity prior to the workshop and identify shifts in participants' perceptions of knowledge of institutional racism and racial equity immediately after workshop participation. Identifying shifts from an organizational standpoint can assist systems in determining where further training and guidance is needed related to addressing disparate and disproportionate systemic outcomes, point to an increase in the number of participants who have developed a common analysis of racism and the history that led to current outcomes, and aid in the analysis of workshop effectiveness.

A key learning from implementation of the Texas Model for addressing disproportionality and disparities in several systems serving vulnerable populations was that when staff at every organizational level understand and value history, culture and the partnership of vulnerable populations and community. Further, changes occur in decision-patterns and interventions that impact systemic outcomes.

Why Undo Institutional Racism

Participants were asked as part of workshop introductions, "why is it important to undo institutional and structural racism in the APD system?" The following responses were captured.

- It's hard to hear men and women talk about unfair promotion and transfers. They feel like they don't have the same opportunities.
- Maybe I had blinders on, but I didn't feel like I was working in a racist organization. Hearing comments over the last twelve months has been disheartening.
- All lives don't matter until Black Lives Matter.
- I want everyone in the Department to feel equal.
- Not to do so is robbing us of opportunities to be the best we can be in terms of talent and opportunity.
- So that people can feel valued regardless of their skin tone.
- We cannot provide service to the community in fair and equitable ways unless we look at ourselves first.
- It's wrong.
- The system needs to be fair and equitable for everyone. Austin is safe, but it's not safe for everyone.
- We've missed opportunities to make changes because people of color haven't been in a better position to have their voices heard.
- It's a matter of life or death for this city. For example, people in certain zip codes have a life expectancy that is ten years less than average.
- It has a diverse impact on society as a whole.
- Because nothing is more destructive of a person's spirit than when they've been singled out for something they can't change, whether skin color, gender, or sexual preference.
- Because the children are watching
- Everybody is not awake.
- If we can't take care of our own people properly internally, how are we going to take care of the people we serve?
- It's our own responsibility to carry out policies and procedures that are fair to everyone.
- I've seen people's self-esteem and careers ruined because of racism.
- As a profession, we haven't been good about teaching our history.
- We can't say we've done what we should have in terms of learning our history. Those who forget history are doomed to repeat it.
- We also have to challenge ourselves and ask: Through whose eyes do we examine history? We need to step outside of ourselves and look at the history of those whose stories have been untold.

Other Comments of Participants

- In addition to accountability, training is needed (education). There needs to be education for everyone because the individual's behavior affects the whole.
- We're not even having a proper conversation about the war on drugs.
- The academy videos continually show black males in violent incidents which shape the way we see Black men. New officers come in with the view that Black men are dangerous.
- Coming out of the academy, we didn't talk about race, but neighborhood. We were told, "when you go to those neighborhoods, take extra precaution." When you expect a bad outcome, what are you going to get?
- Zero tolerance for racism ought to be clear on the front end, but that wasn't clear in orientation from the City or APD. We need to not only make it clear that we don't tolerate discrimination, but we need to market it.

- Our policies and practices have protected certain people in the City. White people have had sub-standard job performance and it was tolerated for months, whereas Black people who have had similar shortcomings have been gone within days. The only difference was race. As gatekeepers, we need to "get in good trouble" when we see this happening. If we say we don't tolerate this and when it happens nothing is done, it's perpetuated.
- We need to have a consistent message at the front door about what will not be tolerated, and reiterate the message at multiple levels as well.
- We need to ask, "am I handling this in the least obtrusive means": both cadets and those who have been here for years.
- We focus so much on the bad apples and not the system.
- We'll become better as we approach this work from an institutional and structural perspectives.
- I hope that everyone in the Department goes through this program. The approach of other programs that we have attended makes people shut down and think that they're a bad person.
- This approach is new or unheard of to much of our workforce. They're not connecting dots with previous bias training. I hope that this training will be lasting.
- It's important that the enemy is not an individual, but a system. This fits with the motto, "safer together." It is an uncomfortable conversation that is necessary.
- If we leave a legacy, what legacy do we want to leave?
- I don't want to be a part of the problem by not moving forward.
- The content and approach used in this training are good.
- We keep trying, but we are not making progress. The way this is framed makes sense. We've been focused on the individual and we can't see the forest for the trees.
- We get so focused on process that we lose focus on vision.
- We see the same percentage of contraband among Whites and Blacks who are stopped, even though Whites are under-represented with respect to the percentage who are stopped.
- The system doesn't value the voices of people who are impacted by their services.
- There is a disconnect between what we say that believe and accountability. We had racial equity training in all of the years where the data show disparities. That means that those trainings were "one and done."
- We need to refocus on accountability in systems and away from individual accountability.
- In recruiting, we can make changes to the application on the "front end" "We do not tolerate... xyz. If you agree, you can proceed with the application."
- We've done lots of training but aren't seeing a different outcome. We definitely need to go to structural.
- The data tell us that something needs to be fixed, but it doesn't tell us what or how. We need to dig deeper.
- I hope we don't do things in a cycle. I hope we continue to have diverse representation.
- We have a distinction between sworn and civilian. While we have the right voices at the table, I hope we will allow outside voices.
- Relationships are the basis of the external culture. What we lack is an empathetic lens. We need to create a space to listen and learn, as well as to create a model for the entire nation.
- We have the same training year after year, and the outcomes of traffic stops don't get better. It is significant that the data are getting worse for African Americans while the percentage of African Americans in Austin is decreasing.
- How do we ensure that we're building things that will last ten years from now: that people who come after us will sustain what we do.
- From the perspective of data, heart, and mindset, the civilian side has all eyes on how ADP will respond.
- I think we should explore more from the social-emotional aspect and send not only a message of what we won't tolerate, but the culture that we do want.
- The significance of eyes from the past are important. I think we can't get enough of the history of Austin.
- How does the community see the department, and how can we bridge that gap?
- I feel that this group is going to do really awesome things and I'm glad to be a part of it.
- People have to be won back to engage: both within and outside the organization. Some think that it's a hopeless task. Everyone has to pick up the oars and row the boat when some wonder if they even need to be in the boat.
- I think that this is a good way to move the system forward, but all pieces of the system are not here. Those who are not represented here are making decisions about our system, and that's frustrating.

- I'm excited. I'm ready to get out of the blocks and get moving. In addition to the data, which we know, we have to be able to think outside of the box and try some different things. As we're developing this plan, people are still being impacted within the department and in the community. Nobody has the perfect roadmap, so we have to take some risks. This needs to be something that all of our directors in the City need to hear. For example, someone in another division said that if a plan to address the homeless doesn't work, "we are going to unleash APD."
- If we can get to a point that any interaction can see our humanity, that will be a major step in addressing racism.
- Our efforts can't be departmentalized. It's not only something that only APD can work on. It needs to involve all departments of the City. Our eyes are opening that this discussion involves more than APD, and it can't be an adversarial approach. If we say that the only change involves APD, we're limiting our outcomes.
- Regarding power and purpose, there is a necessity to shift power. The history of this nation has been to "unleash" power on people of color. The pain point has been that power dynamic that people have been so frustrated about. Maybe we need to redefine our mission and purpose.
- In "re-imagining" public safety, what is the relationship with other organizations? That involves a deeper dive into a difficult conversation. How do we bring this into the "re-imagining" conversation.
- Anything that is working for Black people is destroyed, such as Black Wall Street in Tulsa, and Anderson High School in Austin.
- We used to arrest youth because of graffiti until the skateboarders started doing it. Then it became art, and we promoted it.

Participants' Surveys

JJC examined the completed pre- and post-training surveys, feedback from participants on evaluation forms and during debrief and strategic planning. This report summarizes the results of the training surveys and evaluations and JJC's overall recommendations related to strategies that reduce or end racial inequities and disproportionality.

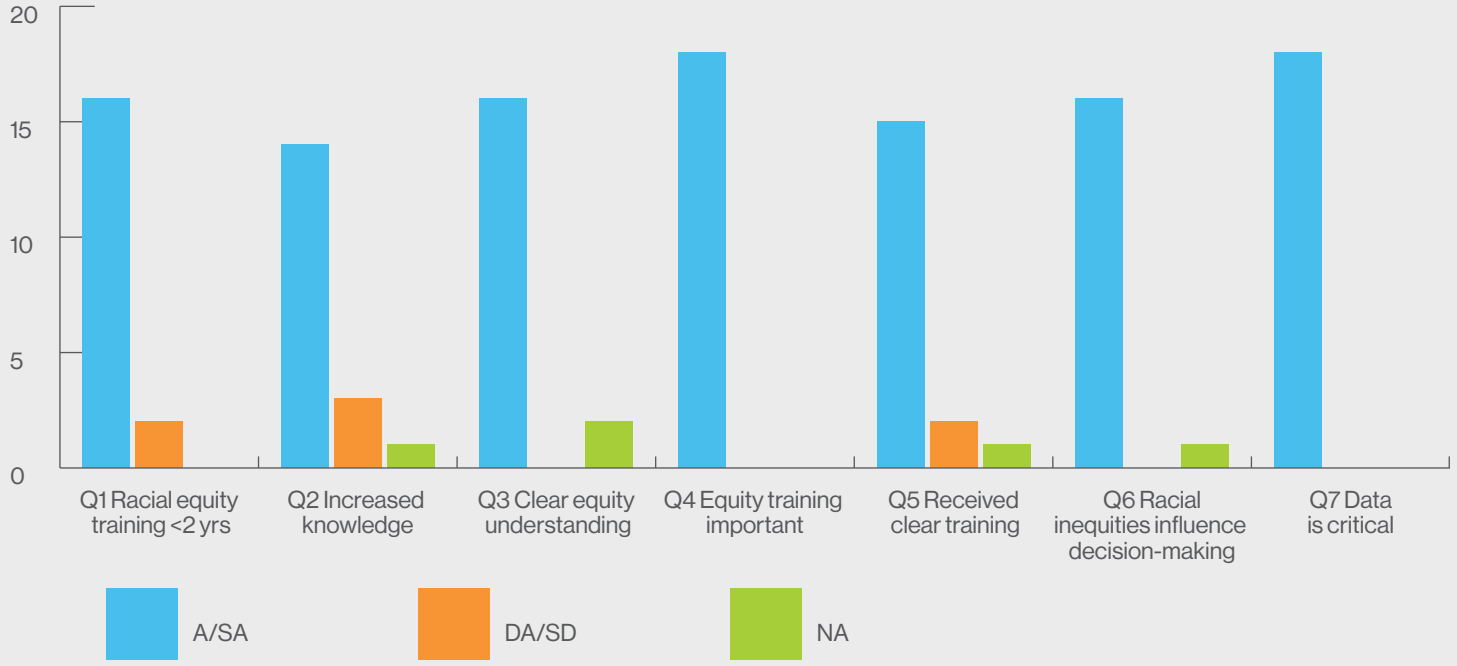
Pre-Surveys

JJC administered the workshop pre-survey immediately before training while the post-survey and evaluation took place immediately after. Participants' completion of surveys and assessment forms were anonymous and voluntary. Participants completing pre- and post-training surveys were asked to rank their agreement with the following seven equity statements using a Likert-type scale of "Strongly Agree," "Agree," "Disagree," "Strongly Disagree," and "N/A Unsure".

1. *I have received training within the past two years that has increased my knowledge and understanding of institutional and structural racism.*
2. *The training that I received contained information that increased my knowledge about the underlying causes of racial in equities in policing.*
3. *I have a clear understanding of what racial inequity and disproportionality means in helping systems.*
4. *I feel that it is important to train leadership and departmental teams to have an analysis and understanding of the history of institutional and structural racism in LE.*
5. *I have received clear training on the impact that institutional racism has on families and communities.*
6. *Institutional and Structural racism impacts the decision-making processes of individuals working within systems.*
7. *Data is critical in identifying racial disproportionality and disparities and in developing appropriate strategies that reduce racial in equities and improve outcomes for all populations.*

Most participants agreed or strongly agreed with all seven racial equity statements before training. At pre-survey, all participants agreed or strongly agreed that racial equity training is important (100%) and describe data as critical to identifying racial inequities (100%) (see Graph 1). Ninety-four (94) percent of participants agreed or strongly agreed institutional racism affect the decision-making within systems (see Graph 1). Eighty-nine (89) percent of participants said that it is important to train leadership and departmental teams about the difference between equality and equity (see Graph 1). Finally, seventy-eight (78) percent of participants said the institutional racism and racial equity training prior to the JJC training increased their knowledge.

Graph 1. APD Pre-Training Survey 09/24/2020 N=18



Post-Surveys

The post-survey asked again the seven equity questions for participants' after training. All participants agreed or strongly agreed with all seven equity statements (see Graph 2). (One participant joined by phone and did not complete the post-survey or evaluation.)

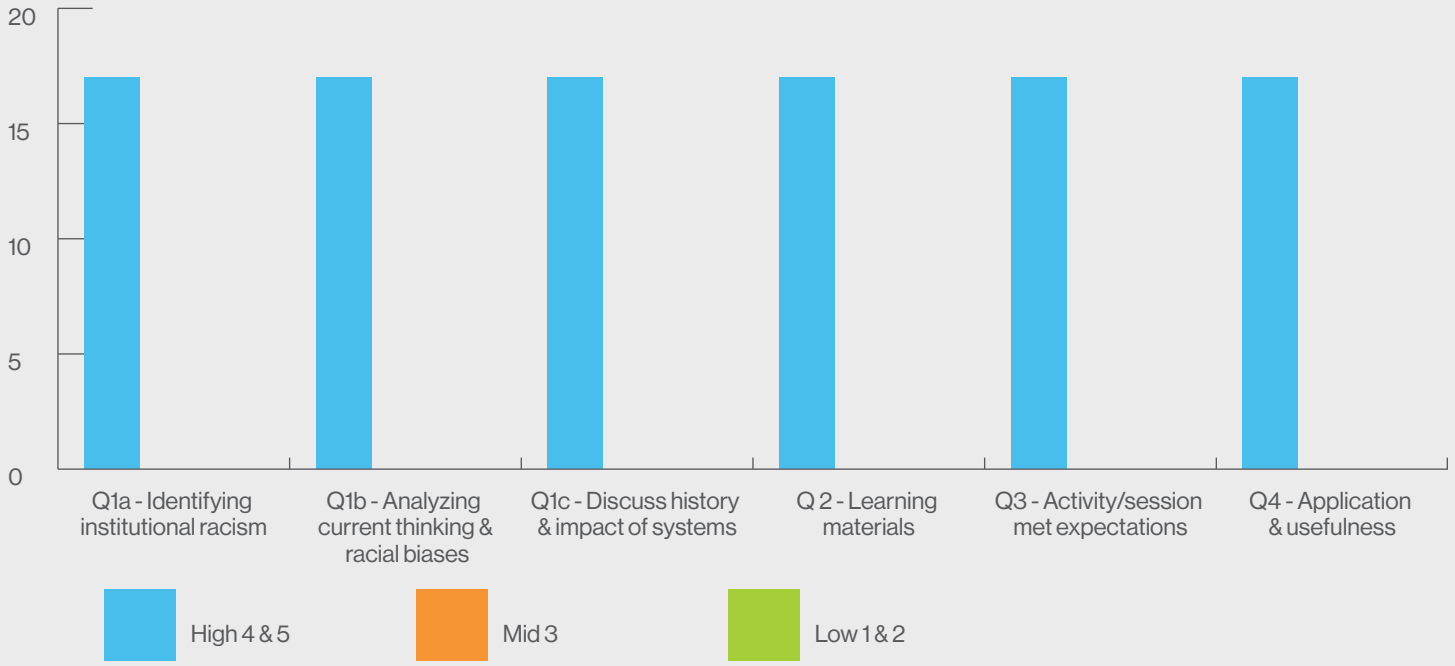
Graph 2. APD Post-Training Survey 09/25/2020 N=18



Participants' Evaluation

As part of the evaluation, participants ranked JJC's achievement of the workshop learning objectives and the application and usefulness of content on a Likert-type scale of one through five where "1" was the lowest and "5" was the highest (see Chart 3). All participants ranked all scaled responses at "4" or "5" (see Graph 3).

Graph 3. APD Participant Evaluation – Scaled Responses 09/25/2020 N=17



In addition to the scaled responses, participants provided qualitative feedback based on the following questions.

"What information or activities did you find most impactful?"

- discussion on equality and equity
- deep discussion on systems
- safe sharing environment; analogies
- equity vs. equality "Great" Enjoyed all!
- the statistical analysis of systemic racism
- the equality vs. equity exercise
- definition of structural an institutional racism
- all the examples & dialogue
- explaining the difference of systems-based vs individual based racism. Focus on systems, equality vs. equity graphic
- the background information of the instructors' parallel experience & impact on CPS systems to better outcomes for Blacks
- highlighting the differences between individual racism and systemic racism
- equity/equality exercise
- slide presentation/conversation/knowledge
- the chart equity & equality chart
- group discussion and experiences—understanding of systems
- The equality versus equity slide. The discussion and presentation were quite impactful.
- The equality vs. equity

"What aspects of the process will be most helpful to you in your daily life and/or work experience?"

- decision making
- developing strategies

- new understanding of equality v. equity
- ability to identify the barriers!
- understanding and dismantling systemic racism
- understanding the role of systems in outcomes and looking with a new lens
- having this conversation w/non-blacks
- the greater understanding now imprinted on me
- using a systems-based lens to examine issues and develop solutions
- identifying ways to remove fences
- Institutional/structure of racism
- all of it—but who was in the room receiving the training
- the equality vs equity

"How will this process provide an opportunity for you to be more effective in your work?"

- listening with a wider spectrum of knowledge
- developing analysis to think systemically
- understanding equity
- ability to change systems
- looking at the processes through the lens of outcomes
- the opportunity to use a new lens w/data to determine if we are affecting outcomes in a positive way
- helps me too create a safe inclusive environment to have a dialogue about this issue
- it gave me the awareness, tools, and hope I needed to move forward
- providing information I can use to create actionable items
- a framework to use when analyzing current systems & having conversations with coworkers about change outcomes
- creating a group to work together, having been through this training together
- better identify organizational impediments to equity
- the principle understanding we put to use in the department (APD)
- education and challenge to think outside the box
- understanding, enlightenment
- I will be able to clearly articulate how structural racism impacts the implementation of initiatives
- this process has helped me to look at the systems

"What new skill or idea will you implement into your job or practice...a result of attending this educational event?"

- decision making w/equity in mind
- systems thinking
- still a work in progress
- ensure all employees are exposed to this
- evaluating outcomes as systemic indicators
- providing this same lens and understanding to the workforce
- open conversations on race relations
- I will re-evaluate hiring processes specifically disqualifications that may be inequitable. I will add anti-racism in our mission vision.
- looking @ all policies & practices in my area of responsibility
- removing the fence!
- using a systems approach to problem solving
- implement the ideas of this session
- ensure the consideration of applicants based on their particular skills and circumstances
- addressing systemic change

Participants' Additional Comments

- great!
- truly outstanding & inspirational
- you all are awesome I want to be you
- best training not only on this subject but compared to other topics
- great training!

DEBRIEF

As a follow-up to the GWA workshop, JJC conducted a 3-hour debrief with participants. The purpose of the debrief was to share the data and information collected through participants' pre- and post-surveys and evaluation and consultants' observations drawn out from training discussions, provide participants with an opportunity to share their personal insights and awareness after reflection, gather additional feedback on individual training experiences such as how they may have connected with content and activities, and identify any new perspectives and learnings, which might translate to changes in day-to-day practices and strategic planning.

Why important to undo institutional and structural racism

- It's a birthright.
- Now we have a better definition and now I have a starting point. On both sides, there needs to be an understanding

of how we want our officers to come home every night.

- Colin Kaepernick was very peaceful, but he was told to stay in his place and was ostracized.
- After Olympic medalists Tommie Smith and John Carlos gave the Black Power salute while the Star-Spangled Banner was playing, their lives/careers were ruined because they didn't stay in their place. (They'd won gold and bronze medals respectively in the 200-meter sprint at the 1968 Summer Games in Mexico City.)
- Law enforcement is often used as the clean-up mechanism for other systems. Unless we address the problems in the whole system, we're still going to tell police to take care of it.
- For the longest time, I thought I knew what institutional racism meant, but I realize that I don't.
- If I go in thinking that there's going to be a bad outcome, there's going to be a bad outcome.
- Teaching cadets racial profiling
- Many cadets say that they grew up in neighborhoods where everyone looked like them, so most of what they learn about Black people is learned on the street.
- In medical school, they dissect bodies to learn more about how to find a cure. The same is true about the history of policing.
- How do we get people to step into the reality of what Black people experience every day? Black people get tired trying to convince White people that this is really happening. It feels like a loop repeating, and it's tiring.
- If we're not conscious of the jobs we do, we can do really bad things. For example, there were people in Nazi Germany who went to work every day and planned transportation of trains to the concentration camp; those in purchase who bought bullets and gas; those who were planners, and so forth.
- As the lightbulb comes on, people need to know about resources that are available. How do we get everyone at the table who needs to be there?

What we heard from participants about fences in the APD

- The system that is in place for promotion. Is it a fair system? What does a fair system look like? That brings in the contract and barriers associated with that.
- Challenges with specific required course work in forensics that vary by university and impact incoming qualifications.
- Many applicants have been disqualified because of low category offenses that can be reconsidered for civilians.
- Promotions, transfers, and disqualifies in recruiting system.
- Making sure everyone has an opportunity to succeed and advance. Inclusion across the board.
- FTO program needs to be re-examined where FTO tells new officers to forget what they've learned in the academy. Can ride-alongs be a part of cadet training in the future?
- Communication throughout the department from the time a recruit steps into the academy and some of the comments within and externally from the community reveal communication issues.
- TPOA has a document with a whole list of items. They are being written up more formally. This information will be shared and may impact Women, Hispanics, and Union as well. Don't want to leave out any group.
- Commitment from leadership that is communicated both internally and externally that we are going to make this change at every level.
- Commitment to leaning into the fences and acknowledging the fences.
- Fence around community trust. Figure out strategy to restore that trust. On the community side, there are people who don't want APD at the table, but they need to be at the table in order to re-imagine public safety.
- Resources. If all 50 or 100 managers throughout APD were involved in this discussion, we would have so much more input into what the fences are.
- In the recruiting process, we should consider allowing second chances for bad credit, eviction, and so forth.
- Assure that we don't rebuild the fence with protectionism in efforts to rebuild trust within the community. For example, it's true that police want officers to come home every night. How can everyone sit at the table and be respectful of the culture from the community's viewpoint? **JJC**: Maybe go to the group and ask, "what would it take to be invited back to the table?"
- How do you repair trust when some of the messaging is not community oriented? **JJC:** Through communication, the community needs to know what APD is doing. How do you message it in a way that says this is what the APD is doing?
- Some people who don't represent the community go through the back door and say that they do. There has to be reciprocal communication.

- We must use the history of policing as a point of departure.
- The community has power, but no authority. The power comes from the institution. How can we bridge that gap?
- How do we transfer authority to the community so that it is actually distributed there and change comes from a unified effort?
- Who is "the community"? Some parts of the community are not in sync with or in agreement with other parts of the community. JJC: How do we develop strategies to hear voices from all segments of the community?
- There are multiple communities. How do we talk to the little guy in the equity slide such as the formerly incarcerated, Black trans women, homeless, etc. because those are the most vulnerable and those most left out of the community. If we don't have an existing relationship, we need to create one.
- Division between sworn and civilian is an extreme fence. Employee relations and recruitment have areas of similarity to identify and then synchronize. That's a huge piece of the puzzle. Employment processes for 911 and officers are the same in the beginning, and then break off at some point. If HR is not on the front end of employment meetings, there are challenges on the back end.
- Do a better job of marketing areas that have been neglected.

STRATEGIC PLANNING

Fundamental to the APD's future success in tackling the complex and persistent problems of racial disproportionality and disparities in its outcomes is a roadmap—strategic plan—designed to address institutional and structural racism. With the foundation of a deeper understanding about institutional and structural racism as the root cause of racial inequities; the goal of the APD strategic planning session (as facilitated by JJC) was to identify priorities and opportunities for measurable actions.

The strategic planning session opened with participants selecting by consensus the following immediate priorities.

1. Develop and deliver a consistent message about racial inequities and disproportionality about what will not be tolerated and a plan for reiterating the message at multiple levels within the organization and at APD's "front door."
2. For both the APD cadets and those who have been in the department for years, ensure policing is handled by the "least intrusive means."
3. Thoroughly analyze data to ensure focus on the most appropriate areas.
4. Engage members of the community who participated in this process with APD, in the ongoing planning and implementation of new strategies that will improve and strengthen partnerships with community.
5. Add anti-racism language to the APD core values and principles to strengthen the APD mission and vision statement in conveying the importunate of an anti-racist organizational culture.
6. Develop a process for engaging with "Ida Sector" officers, community members, TPOA, and others, to actively involve and hear the voices of the community in the design of a new and inclusive community policing model.
7. Examine budget allocations that may support the new community policing model, i.e., hand select officers, include Ida Sector community members in GWA workshops with assigned APD officer
8. Engage both sworn and civilian staff in the process of identifying and undoing institutional and structural racism.
9. Identify other cross systems partners, city of Austin departments, community-based organizations and individual community members to include in the ongoing efforts to develop an "upstream" collaborative approach to undoing institutional and structural racism in APD.
10. Prioritize and develop a plan to make GWA training available to the APD across department and at multiple levels.
11. Conduct a critical examination of the APD policies and procedures through a racial equity lens

RECOMMENDATIONS

The historical nature and design of law enforcement and all other systems, shows that systems as originally structured have an oppressive racially defined relationship with internal and external constituents. Therefore, ensuring an organizational culture and climate that is supportive of the APD vision requires that the department actively engage in creating a sustainable culture; one not solely focused on individual implicit biases, but rather,

placing a higher level of accountability for addressing racism at the institutional and structural levels. Systemic change will only occur when leadership can visibly demonstrate a willingness to be intentional, deliberate, transparent and vulnerable in recognizing the long history of racism in policing and in creating a liberated and safe space for internal and external stakeholders to share in every step of the process of creating the new APD anti-racist culture.

JJC has recommended in the full report that APD use key components of the nationally recognized Texas model to support and enhance efforts to create its more race competent organizational culture. Racial disproportionality and disparities are complex and multi-faceted. These components will act as a frame for the necessary work ahead.

REFERENCES

Austin History Center (2018). Austin Police Department Guide, Sources of Information Relating to the Austin Police Department. Austin Public Library

Brown, K. (2006). Leadership for social justice and equity: evaluating a transformative framework andragogy. *Educational Administration Quarterly,* 42(5), 700–745.

DeMatthews, D. (2016). Effective leadership is not enough: critical approaches to closing the racial discipline gap. *The Clearing House: a Journal of Educational Strategies, Issues and Ideas,* 89(1), 7–13. doi:10.1080/00098655.2015.1121120

Taylor, E. W. (2008). Transformative learning theory. *New Directions for Adult and Continuing Education,* Vol. 119, Wiley InterScience, doi: 10.1002/ace

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COMPLAINT
EXHIBIT C

Community Report

Austin City Council Resolution 66: Austin Police Department Training Video Review Panel

By: Jeaux Anderson, Angelica Erazo, Andrea Black, Maya Pilgrim, Miriam Conner, Phil Hopkins

January 18, 2021

"The truth is that the police reflect America in all of its will and fear, and whatever we might make of this country's criminal justice policy, it cannot be said that it was imposed by a repressive minority."
-- Ta-Nehisi Coates, Between the World and Me

"Today has shown police don't need de-escalation training. They choose who to escalate on. That's not a training issue."

-- @traceyecorder in reference to Jan. 6 riot at the US Capitol

LINK TO EXECUTIVE SUMMARY

I. Introduction

II. Patterns Identified in Videos

A. Pattern: Racial Bias, Stereotypes and Use Of Force
B. Pattern: Overrepresentation of "What Not To Do" Videos
C. Pattern: Ineffective Language and Neglected Power Dynamics
D. Pattern: "Us Versus Them" Mentality
E. Pattern: Dramatic Reinforcement of the "Danger Imperative"
F. Pattern: "A Few Bad Apples" Theory of Police Accountability
G. Pattern: Emphasis on Transactional Interactions
H. Pattern: Inappropriate Use of Mass Media News Clips

III. Insights into the APD Training Academy Curriculum and Process

A. Ineffective Adult Learning Strategies
B. Lack of Overall Coordination
C. Ethics Training Isolated
D. Concerns About Process

IV. CONCLUSION

I. INTRODUCTION

SCOPE OF THIS PANEL

We were invited as community member representatives to review a core set of Austin Police Department (APD) training videos shown at the police cadet academy as laid out in Austin City Council Resolution 20191205-066.[1] The videos we reviewed were chosen by leadership from the Austin Police Department and the Office of Police Oversight. We reviewed videos within the Arrest, Search and Seizure; Arrest and Control; Crisis Intervention; De-escalation, Tactical Communication; Use of Force; and Use of Force - Legal modules. Our task was to identify and analyze any racial and gender inequities in the videos and the ways in which the video training material may reinforce larger cultural stereotypes and narratives.

We are writing this report to share our experience and analysis at the end of a seven-month process. This report supplements the formal reports submitted by the panel facilitators at Life Anew. We would like to call attention to the external review produced by Peace Mill Research and Communications, "Community + APD Equity Assessment Series: Austin Police Department, Training, and Recruiting Divisions."[2]

CONTEXT

We are writing this report in the midst of turbulent times. We undertook this review as a community panel a year after the Austin City Council recognized in 2019, through Resolution 66, the Austin Police Department's (APD) "history of bigotry and discrimination that has contributed to racially disparate outcomes in policing and policy."[3] We came together in 2020 during a summer of uprisings in response to the police killings of Black people. We are currently experiencing a global pandemic that is overwhelming our underfunded public health system and has resulted in disproportionately high sickness and death for Black and Brown communities. This same year, a presidential executive order banning anti-racism training in federally funded programs was issued in an attempt to erase the history and the violence inflicted upon communities of color.[4]

We have undertaken this review and report with a sense of responsibility to the communities of which we are a part and a commitment to voice our analysis and experiences in regards to disproportionate targeting of, and violence toward,

[1] https://www.austintexas.gov/edims/document.cfm?id=332753
[2] http://www.austintexas.gov/edims/pio/document.cfm?id=352525
[3] https://austintexas.gov/page/resolution-66
[4] https://www.whitehouse.gov/presidential-actions/executive-order-combating-race-sex-stereotyping/

communities of color at the hands of Austin's police force. We recognize that the patterns we witnessed while reviewing the APD training videos are not exclusive to APD but are reflective of our society at large. However, as we witnessed in video after video, the power and authority which APD wields can have lethal consequences. We continue to witness Black, Indigenous, and Brown deaths across the country at the hands of police. We know APD wants to and can do better. We submit this report in the hope that APD will:

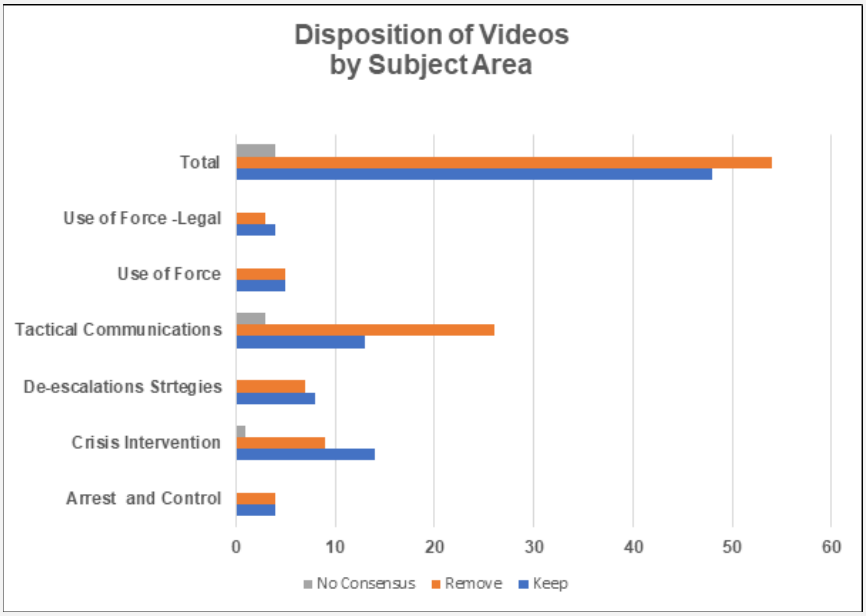
- Unify a siloed approach within the department that currently leads to disjointed training;
- Reevaluate, root out, and correct the ways in which the numerous biases we delineate below--specifically racism, classism, homophobia, ableism, and misogyny--currently permeate its training materials; and
- Interrupt the patterns and mechanisms of systemic violence in the larger culture which are perpetuated by the department charged to protect and serve.

We also recognize that the review of videos used in the cadet training is but a single gear in a larger departmental, city, and cultural machinery that perpetuates biases and behaviors that enact systemic harm and oppression on our communities.

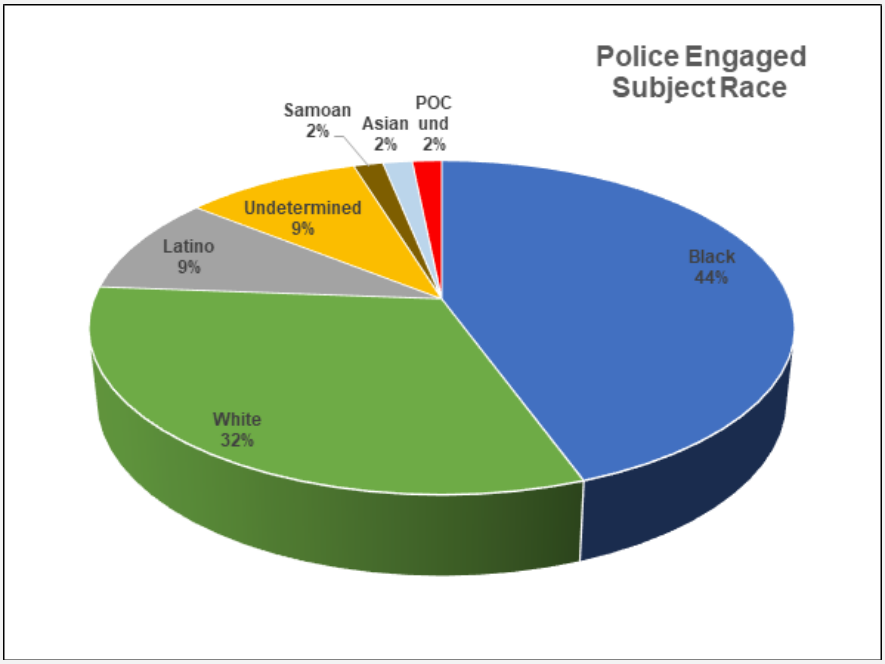
II. PATTERNS IDENTIFIED IN VIDEOS

Pattern: Racial Bias, Stereotypes and Use of Force

The vast majority of the videos we reviewed over these seven months were disappointing in quality. Most were outdated, many were hard to follow and had poor viewability, and some had unprofessional or sensationalistic commentary. Please reference Graphic A below. **But, *by far the most alarming pattern we witnessed was the harmful stereotypes perpetuated against Black and Brown communities***. The videos shed light on the disproportionate interactions police have with Black, Indigenous, and Brown communities that result in violence and death. The videos we reviewed were mirrors of the patterns of racism, sexist gender norms, and classism we see perpetuated across systems and institutions in Austin and nationwide, including the fact that the outcome of many of these videos was almost immediate and completely avoidable death. Graphic B below highlights the race of the subjects that engaged with police from the videos reviewed. Graphic C depict the subject's race that involved the subject being shot. In both graphics we can see people of color, particularly, Blacks, being overrepresented in the videos highlighted in the curriculum.



Graphic A - *(Graphic highlights the disposition of videos by subject area and the review panel's suggestion on either keeping the videos, removing them or where no consensus was reached. Over 50% of the videos were recommended to be removed from the curriculum.)*



Graphic B - *(Graphic displays the subject's race from the videos. Blacks comprised the largest percentage of subjects at 44% and whites as the next highest percentage of 32%. "POC und" is a subject of color of undetermined race. Out of the videos filtered, 59% involved subjects defined as people of color). Austin's city demographic listed the city's population as: 48.3% White (non-Hispanic), 33.9% Hispanic, 7.8% Black, 7.6% Asian, 0.7% American Indian or Alaskan Native, 0.1% Native Hawaiin or Pacific Islander.*

Issues of Racism, Implicit Bias, Not Integrated Throughout

We did not observe any discussion about the historical context of policing and the impact of White supremacy, racism and other intersectional forms of oppression, or implicit bias. While this may be covered in a separate training module, we believe it is critical that discussion of these issues be integrated throughout the training and that cadets be supported and encouraged to discuss the racialized, gendered and classist dynamics at play in every day interactions with the community. **These issues should be addressed at both the individual officer level as well as at the departmental level. Instead, the training appears to be focused solely at an individual level, focusing on an individual officer's "professional" vs "personal" demeanor and looking solely at their individual interactions.** There is no discussion about how they can and should intervene when issues of bias or racism or other misconduct arise or to examine how a department can and should build trust in the community and how it can respond to harm it creates in the community and work to repair harm and rebuild trust. It should not be about "hiding" or ignoring bias but about confronting it in effective ways. This is a critical area that requires in-depth training integrated throughout the training modules.

Dehumanizing Footage

Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed. We saw this play out in the way that many peoples' faces were not blurred--even when footage showed them in extreme crisis, nudity, and in vulnerable positions. In several videos, people's names were shared or people were depicted via police "mug shots" although not relevant to the training objective.

Many of the videos showed People of Color, and in particular, Black people, being brutalized and/or their well-being utterly disregarded. ***Because these are real human beings, not actors, in particular moments of time in their life, it is important to not perpetuate insensitivities to people's privacy and show care and ethics around how people's stories are used as training tools.***

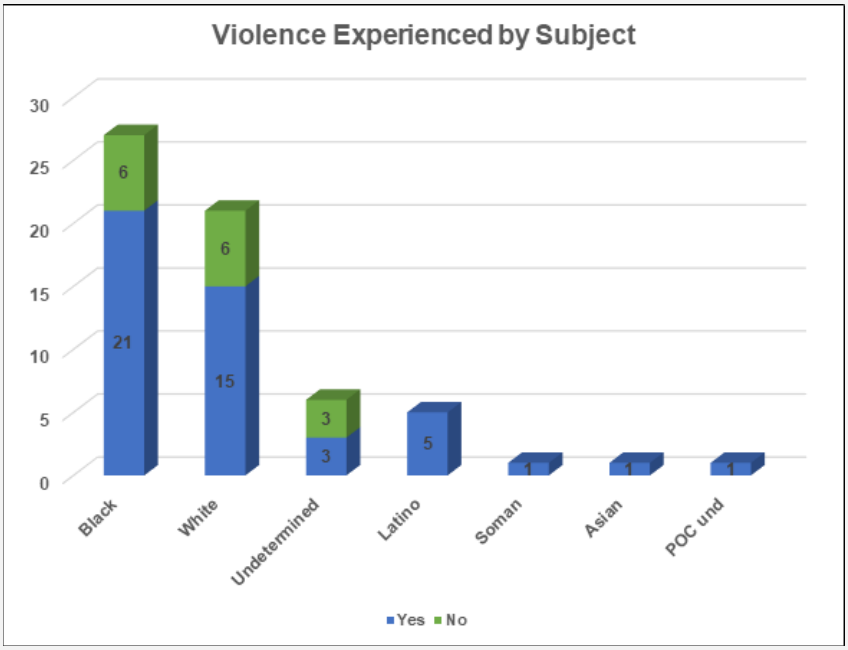
Rapid Escalation and Use of Force with People of Color

There was gross overrepresentation of the use of force and negative outcomes from mostly White male officers interacting with Black and Brown community members. We witnessed again and again mostly Black men dying within minutes, sometimes within seconds, of an interaction with police. There were exceptionally few videos showing the police trying to de-escalate situations involving People of Color. In many of the videos showing encounters with community members over minor criminal infractions, a strong emphasis on gaining compliance and control quickly

led to rapid escalation with often violent and even deadly results. We did not find any consistent focus in the training material on the fact that not all situations need to be controlled to the same extent and in the same ways. Please refer to Graphic C which is a representation of the number of subjects that experienced violence.

Many of the videos, including several that are more broadly used in police academies nationwide, are so disturbing in gratuitous violence against Black and Brown people that we strongly recommend that they only be used as examples of why community members historically mistrust the police. We do not believe these videos should be shown if APD trainers or guest facilitators are not able to offer a critical analysis and discussion of both what went wrong in the videos and how the results shown in them are shaped by deep cultural biases and stereotypes. We fear that repeated exposure to needless violence normalizes such interactions with the public for the cadets and desensitizes them to their own and their communities' humanity.

It is important to state that it was very traumatic for community members to watch repeated racialized violence displayed in the videos. We have grave concerns about the impact watching these videos will have on all cadets, and particularly cadets of color.

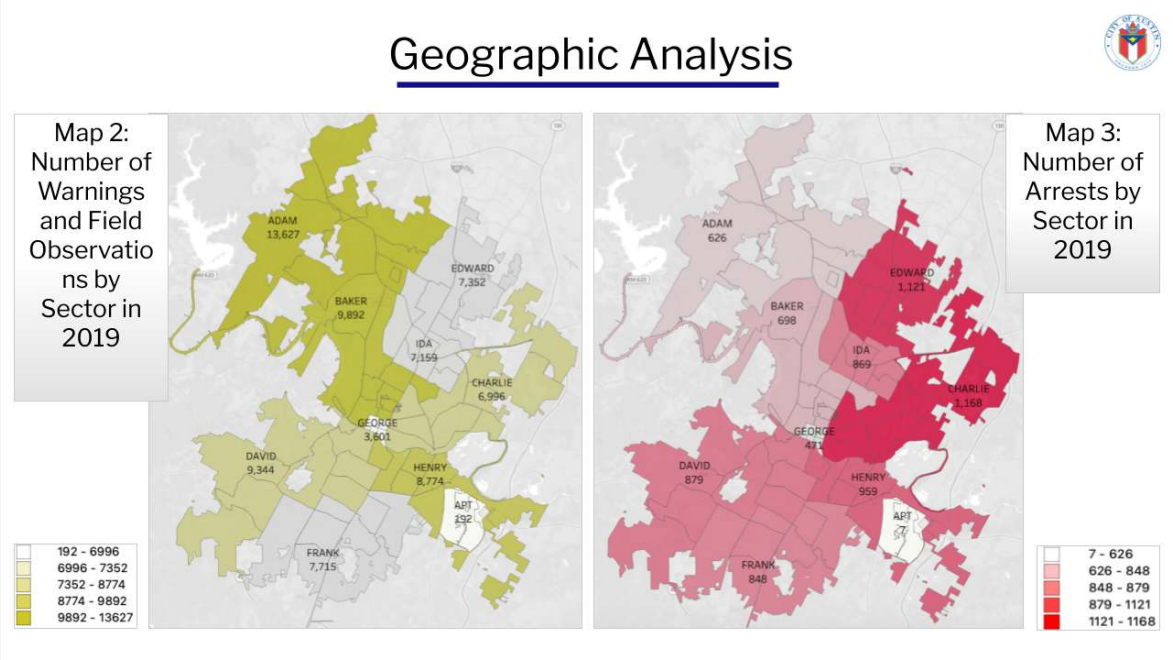


Graphic C – *(This graph is a representation of the number of subjects that experienced violence. Violence is described as tased, shot, shot at, killed, excessive force, shot with a bean bag, and pepper sprayed. As a percentage of the total number of subjects that experienced violence, Blacks represent 46%, Whites represent 30%, Latino 11%m Asian, POC und and Samoan represent 2% each, respectively. All people of color collectively represent 63% of all subjects that experienced violence.)*

Working Class and People of Color Seen as Threats

There was a clear pattern, both explicit and implicit, of different communities being offered different degrees of understanding and grace by officers. Police interactions with upper-class, White communities were noticeably absent in the videos. White people were often given considerable grace and understanding even when they demonstrated dangerous behavior, while People of Color, in particular Black men, were given little to no grace or understanding even for minor and less threatening actions. For example, one video of an armed White man showed an officer speaking calmly and reiterating the person's right to carry a firearm. In contrast, in videos where People of Color were armed or even unarmed, police officers treated them as threats and moved towards use of force with great speed. ***Such patterns echoed and reinforced popular narratives about, and attitudes toward, communities of color as more "dangerous" in clear distinction to White people***. In the training material, class markers also clearly assigned "dangerousness" to less affluent socio-economic groups.

We know that this pattern is not only reflected in the curriculum, but also in current Austin policing. Graphic D below, taken from a recent analysis of racial disparity in policing in Austin by the City of Austin's Equity Office, Office of Police Oversight, and Office of Innovation, shows the tangible result of this kind of biased training combined with deep historical inequities in policing. The map on the left shows that warnings and field observations were disproportionately represented in 2019 police interactions in the predominately White and affluent areas of West and North West Austin. In contrast, 2019 arrests were concentrated in East Austin (Central, North, and South) and areas of South Austin--areas with the highest concentration of Black and Brown residents. This data clearly shows the implications of unequal policing, specifically with officers giving more grace, in the form of warnings, in more affluent and Whiter communities; and giving less grace, in the form of over-policing and arrests, in working class and Black and Brown communities.



Graphic D – *(Graphic from the 2019 Analsys of APD Racial Profiling Data by the Office of Police Oversight, Equity Office, and Office of Innovation.)*

Gendered Stereotypes

Patterns of gender stereotypes across different modules displayed frequent and unacknowledged gender biases. Female officers were rare, and when one was present, we witnessed her judgments and strategies disregarded by her male peers. Descriptions of effective officer presence and posture were often described in masculine ways, such as an emphasis on perceivable upper-body strength. Women were most visible in the Crisis Intervention section--both as officers and community members--reinforcing the "feminized" stereotypes of care and stereotypes that view women as "victims" of "hysteria." While women, both as community members and officers, were absent in most of the Arrest and Control and De-Escalation videos, we did see disturbing moments of violence and "what not to do" examples from White male officers toward Black women civilians. When Black women were featured, the impetus to control their bodies and dominate the interaction was clear, with officers justifying force due to "angry" and "sassy" stereotypes.

A lot of the videos perpetuated toxic masculinity and continued to show a disregard for nuance in what it means to be masculine and in what it means to be a police officer. In their interactions with community members, we repeatedly watched officers cling to ideas of control that perpetuates the need to be an aggressive, alpha male and having to assert dominance. We saw little to no room offered for police officers to turn aside from a "need" to be dominant in order to better connect to, and work with, the community on a human level.

Who Is Allowed To Be In Crisis

Some of the videos, many in the Crisis Intervention section, gave cadets an opportunity to hear personal storytelling and build empathy for people's problems and difficulties. However, this storytelling came almost exclusively from White men. This leaves a gap in knowledge of how mental health issues may show up differently for women and gender-non-conforming community members. ***Instead, women and men of color were rarely allowed to speak for themselves and were portrayed almost exclusively in footage that cast them in uncritical narratives about their needs from the point of view of those who assumed the authority to speak for them.***

This difference in whose perspectives are valued and highlighted in the videos correlates to the stark differences in police responses that we witnessed. It was a very evident pattern in the videos that White male community members tended to receive empathy and the benefit of the doubt from police officers while communities of color were treated as threats. In one example, we watched a police officer give a White-presenting man seven minutes of grace and conversation despite his suspicious behavior, while in several other videos a Black man was shot within seconds of being approached by an officer. The pattern we witnessed was that White community members in crisis are allowed to be in crisis; whereas Black community members, whether in crisis or not, are perceived with suspicion as threats.

Throughout this process, the training curriculum lacked substantive content on how to effectively interact with people with disabilities. There was little to no information provided about the ways in which crisis can present differently for individuals across the spectrum of neurodiversity and ability. There were some videos in the Crisis Intervention section that highlighted information on different abilities and mental health issues, but no clear advice was offered on how to best accommodate a range of abilities or what to look for when approaching a crisis situation. Without this training, officers may not have the tools to recognize the various ways that ability and mental health impact an individual's responses. In some cases, behaviors that may be perceived as "aggressive" by officers may in fact be indicative of mental health crises or disability.

Outside of the Crisis Intervention training section, there was no mention of how to adequately serve and protect community members with disabilities. There were a few videos that appeared to show people experiencing mental health crises; however no explicit mention was made of the role mental health played in the interaction, and many such instances resulted in excessive use of force by an officer. A 2018 audit of APD Response to Mental Health- Related Incidents highlights the lack of implementation of peer-city best practices in APD crisis intervention training. This panel similarly identified these patterns and need for improvement.

Particular Crises Are Validated; Racialized Trauma Is Not

We also observed dramatic differences between the strategies taught during Crisis Intervention and the strategies taught in the other modules. The crisis intervention strategies encouraged officers to consider different factors that may influence a person's responses in a given situation. Trauma responses, developmental disabilities, and neuro-atypical behaviors were discussed and considered. Dementia, autism, and Alzheimer's were highlighted in particular. It was emphasized that people dealing with these issues deserve to be treated with dignity and respect. ***These strategies were nowhere to be seen in any of the other modules nor was their absence deemed relevant in processing the content of the other videos. Limiting these strategies to a particular module can have the effect of contradicting and devaluing those strategies and skills.***

We are concerned that such dignity and respect seemed largely restricted to people in recognizable mental health crises, but not other people in different forms of crisis, particularly those still largely unrecognized and produced by the allostatic load brought on by the stress and trauma of racialized poverty in our society. The emphasis on broadly supported mental health issues made stark the absence of recognition and support for these other serious and prevalent mental and emotional health issues throughout the videos.

This lack of recognition contributes to the patterns of violence which have resulted in police killings nationally of George Floyd, Breonna Taylor, and Elijah McClain in 2020 and the following deaths at the hands of the Austin Police Department from 2000-2020: Mike Ramos (2020), Mauris DeSilva (2019), Hugo Alvarez (2018), Aquantis Griffin (2018), Victor Sanchez Ancira (2018), Leslie Salazar (2018), Thomas Alvarez (2018), Landon Nobles (2017), Morgan Rankin (2017), David Joseph (2016), Larry Jackson, Jr. (2013), Ahmede Jabbar Bradley (2012), Maurice Paladino (2012), Byron Carter Jr. (2011), Devin Contreras (2010), Nathaniel Sanders Jr. (2009), Kevin Brown (2007), Daniel Rocha (2005), Michael Clark (2005), Jesse Lee Owens, Jr. (2003), Lennon Johnson (2003), Sophia King (2002), Jose Navarro (2001), Joel Hernandez (2001), Kevin Scott (2000), to name a few.[5]

RECOMMENDATIONS:

- There needs to be explicit acknowledgement of the embedded racism and cultural narratives in the videos. Issues of White supremacy, as well as race, gender, class, and other inequities in our community, should be explicitly

[5] "Use of Force Deaths in Austin, TX," National Association for the Advancement of Colored People (NAACP) – Austin branch, http://www.naacpaustin.com/use-of-force-deaths-in-atx.html. City of Austin 2018 Officer-Involved Shooting Report, Office of Police Oversight, June 2020.

discussed throughout the training modules, not just included in one or two sections.

- Find new training videos that offer a much more diverse representation of the demographics of both the Austin community and the APD force. Videos should portray multiple points of view and depict a diversity of community interactions, for example with women, the elderly, youth, LGBTQ, etc as well as different ages, races, ethnicities, abilities, individuals who are non neurotypical, etc. Special attention should be paid to the types of interaction portrayed so as not to overrepresent communities of color in violent interactions or overrepresent White community members in storytelling.
- Support APD trainers to build their capacity to analyze videos more fully and critically in terms of race, class, and gender equity. This capacity should be built in collaboration with community experts who are well versed and experienced in facilitating these conversations and integrating this type of analysis.
- Ensure that the privacy and dignity of all persons depicted in videos are upheld by blurring faces and nudity and deleting names.

Pattern: Overrepresentation of "What Not To Do" Videos

Over half of the videos that we reviewed displayed officers engaged in behaviors and practices they should NOT be doing, and a large proportion of those videos displayed officers using excessive force or making other grievous mistakes. We have termed these videos as "What NOT to Do" videos. These videos are very problematic. ***The continuous repetition of 'What NOT to Do' interactions actually reinforces negative behavior; can lead to officer desensitization about abuse, injustices, and corruption; and dehumanizes the community that the officers are sworn to protect.*** Only a very small percentage of videos we reviewed were examples of what officers SHOULD be doing, and even those contained content that was sometimes deemed problematic by the review board.

RECOMMENDATIONS:

- Integrate adult education methods that prioritize methodologies that support adult learning. Watching videos about "What NOT to do" is not the best approach. APD should emphasize videos that demonstrate and reinforce positive behaviors rather than videos that display and reinforce bad conduct.
- Prioritize a few "What NOT to do" videos that could be part of a deeper analysis and discussion in the classroom about the larger dynamics that tend to produce undesirable results.
- When we encouraged the trainers to identify positive, intentional 'what to do' videos, we were told that they would be hard to find. This serves as an argument for allowing time and resources for trainers to research material and to engage in creative strategizing to create, identify, or locate the types

of videos instructors need. The difficulty in finding such material quite likely also speaks to a broader nationwide dearth of appropriate, good quality police training videos and would suggest the need to review other police department training materials.

- Make de-escalation a much higher priority in the training and include more videos that demonstrate de-escalation without the use of a firearm.

Pattern: Ineffective Language and Neglected Power Dynamics

In all modules, but especially in the Tactical Communications section, we observed that the attempt to demonstrate professional verbal interaction often portrayed that communication unrealistically, with an emphasis on repeated stock phrases that have limited use in reality. Impersonal recurring phrases included: "cooperate so we can get you out of here quickly," "we want to get you home," "we're on your side," and "we want to hear your side of the story." Such examples not only come off as artificial and contrived but as essentially dishonest. The portrayal of them in the videos was stilted and reinforced that these ways of talking are not natural to the officers employing them.

We noted a stark contrast between the examples offered in the videos and the examples offered by the training officers themselves in our discussions. The instructors were able to demonstrate the sorts of communications they would offer in ways that were quite natural and believable. Our concern is that such examples as presented in the videos discourage rather than model the training of effective non-biased communication.

We also observed that the phrase "stop resisting," while frequently heard in videos, is not used in everyday language. In videos it was not clearly understood by community members with whom officers were interacting and tended to escalate the situation. More often it seemed to be used as a technique to justify use of force: in a number of videos we saw police officers shout it to people who were not resisting and were trying to comply with the officer's instructions. Police officers need to be trained in more effective, relatable language and strategies.

In particular, generalized instructions on compliance seem particularly ineffective with communities who are traumatized by the hyper-criminalization of their neighborhoods and whose families and communities have been disproportionately negatively impacted by the criminal legal system. This reinforces a dynamic of dominance which requires total submission in order to survive while more privileged communities are treated with respect and dignity. Even when officers in video footage communicated what appeared to be a genuine and sincere desire to help, they seemed unaware of their unmistakable position as representatives of state authority and how that authority creates a barrier, at least, to providing that help.

They did not portray an understanding of the unequal power dynamics inherent between police and members of the public.

Cadets need to be educated about these obstacles and provided with tools to navigate both the relative power dynamics between officers and the public and their own trauma and emotions. The phrase "I'm here to help" simply will not be heard the same way from a uniformed officer with a gun and the power of arrest as from a neighbor or a social worker. Given this power differential, any such offers of help may be perceived as orders. Furthermore, if a civilian is exhibiting fear or trauma responses because of the power differential, those responses may be perceived as suspicious or threatening by the police officer who may escalate the situation. Expectations formed from the other training videos that reinforce the perception of certain community members as more dangerous, as well as the lack of a fully effective Crisis Intervention Training, exacerbate this likelihood.

RECOMMENDATIONS:

- Trainers need to explicitly acknowledge race, class, and gender dynamics at work in the interactions with community members displayed in these videos. Trainers should not avoid these dynamics or focus, as they currently do, solely on an individualized framework; i.e. a police officer's "professional" versus "personal" face.
- Inculcate a culture of attention to social and emotional intelligence and develop successful coping strategies for officers throughout an officer's service through consistent policies and practices.
- Include explicit training in how to build rapport with the community and connect with community members in ways that are honest, transparent, and authentic rather than using detached, formal "police" language.

Pattern: "Us Versus Them" Mentality

One of the more pervasive biases we observed is the us-versus-them mindset. This bias existed at a fundamental, pervasive level, further informing other biases with respect to race, ethnicity, class, gender, and ability, and affected officers of color and female officers in the same or similar ways as White male officers.

The us-versus-them bias was explicit in some of the videos--i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:

- An enhanced focus on officer safety over the safety of the community as a whole,
- A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"

- An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and
- Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.

Primarily this bias manifested in a focus on police officers "winning" by overcoming resistance and threat from the community or by prevailing in court or in grievance and complaint hearings. ***It is counterproductive to frame interactions with the public as a contest in which the police should focus on "winning." This cannot help but set up the public in the position of "losing" in encounters with the police.*** The focus turns from compassion to conquest as officers see community as a roadblock in their effort to control and "win." In the end, communities will continue to suffer, as there is no viable way to "win"--not only against police officers, but also against the system that continues to protect police officers in this us-versus-them framework.

We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.[6]

We would like to call attention to Dr. Sara Villanueva's report referencing the paramilitary culture of both APD and particularly the training academy. We observed a paramilitary training style in some of the videos we reviewed. Dr. Villanueva states:

> *There is an apparent mismatch between a typical paramilitary format and effectively preparing cadets to work in a manner consistent with the community-oriented police service model. A growing body of research has shown that paramilitary-structured academies do not align well with the*

[6] In the past few decades, since 9/11, for a variety of reasons and by means of a number of local, state and federal programs, police departments, including APD have grown more militarized, not only or even primarily in terms of equipment, but also in terms of broad perspective. One of the most problematic dynamics of the national funding sources for the increased militarization of police departments is the way it skews accountability away from the local community and toward the broader state or federal sources of that funding. Cf. Also, https://www.pnas.org/content/115/37/9181 (actual report)
https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communities-study-finds (easier to read report)
https://www.aclu.org/issues/criminal-law-reform/reforming-police/war-comes-home?redirect=war-comes-home-excessive-militarization-american-policing

principles of community policing and problem solving which are based on collaborations and partnerships.[7]

RECOMMENDATIONS:

- The training and training videos should be more focused on serving and protecting the community instead of its current focus on the "warrior" mentality which views the community as the "enemy."

Pattern: Dramatic Reinforcement of the "Danger Imperative"

Connected to both increasing militarism and the us-versus-them dichotomy, which we believe is at the heart of the repeated instances of police overreactions to threat and use of excessive force, is what researchers have called the "danger imperative"--a belief in a constant and prevalent danger for police officers. APD is not unusual in this regard. A significant number of training videos in most police academies focus on interactions where officers' lives are under threat or in significant danger. Several of the descriptions of the training materials in use at the APD academy state this plainly. However, statistics from both the FBI Uniform Crime Reports (compiled by departments' self-reporting nationwide) and the US Bureau of Statistics show this emphasis to be disproportionate to the actual danger an officer is likely to face. Policing is among the top 20 most dangerous occupations, but it is near the bottom of that list, according to Department of Labor statistics.[8]

Violence against police has been dropping for the past five decades, while police violence against the public remains steady. Ambush killings of the police are down 90% since 1970 according to a longitudinal study in the *Police Quarterly*.[9] Police officers are several times more likely to die in an automobile accident, but still routinely refuse to wear seatbelts because they don't want to be hindered from exiting a vehicle should they be threatened with deadly force, a far less likely occurrence.[10]

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[7] Villanueva, Sara, *et. al.*, *Review Analysis and Strategic Plan* for the Austin Police Department Training Academy, May 2020 (p.10).

[8] https://www.bls.gov/iif/oshcfoi1.htm#rates

[9] White, Michael D., "Ambush Killings of the Police, 1970-2018: A Longitudinal Examination of the 'War on Cops' Debate," *Police Quarterly*, 0(0) 1-21, Sage, 2020. Between 1980 and 2014, an average of 64 law enforcement officers were feloniously killed each year. There are over 600,000 police officers in over 18,000 agencies in the US. Construction workers and farm laborers have similar rates of on-the-job deaths. Steel workers, truck drivers, and farmers/ranchers die on the job at twice that rate. Trash collectors and roofers die three times as often. Airline pilots and fishery workers die four times as often. Loggers die seven times as often on the job. With the exception of truck drivers, none of those other dangerous occupations kill others frequently in the performance of their duties. Cf. also, "Disaggregating the Police Function, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3564469#:~:text=It%20proposes%20a%20totally%20novel,safety%20from%20the%20ground%20up

[10] Sierra-Arévalo, Michael, American Policing and the Danger Imperative (November 1, 2016). Available at SSRN: https://ssrn.com/abstract=2864104 or http://dx.doi.org/10.2139/ssrn.2864104

However, despite the statistical evidence, officers are trained to view every encounter as potentially life-threatening. While any given encounter with the public may indeed pose some degree of danger to an officer, the fact that across the United States 600,000[11] officers constantly ready to escalate situations out of fear for their safety poses a much greater threat to the public they serve. If officers are trained to view every person they encounter as a potential "cop-killer," then bodies already perceived by our larger society as inherently dangerous, such as young Black males, will inevitably bear the brunt of that fear. Further, the central dynamic of policing--to control the public in every encounter with them--will tend toward unnecessary escalation when that control is perceived as being resisted, something that occurs far more frequently when officers interact with People of Color.

One of the training officers acknowledged that there has been an overemphasis on an officer "going home at the end of the shift" for some time in policing and police training. The training we reviewed, particularly the training highlighting the danger imperative, definitely emphasized the safety for the officer above all else. ***We believe the emphasis should be on maintaining the safety of everyone in police interactions with the public. The goal should be for <u>everyone</u> to go home safely.***

RECOMMENDATIONS:

- The curriculum needs to address the impacts officers' choices have on individuals in the community. Cadets need to be continually reminded that their actions and choices may have profound and lasting impacts on individuals' lives.
- Introduce explicit and in-depth training in ways to mend relationships and rebuild trust with the community after bad actions by the police: from empowering individual officers to speak out after witnessing behavior ranging from merely inappropriate to criminal, to articulating the responsibilities, institutional expectations, and departmental practices in relation to the community when community standards are transgressed.

Pattern: "A Few Bad Apples" Theory of Police Accountability

We noted in our review the way in which examples of bad or even criminal behavior on the part of police officers in the videos was explained as being the result of individual bad actors. Repeatedly, the training officers expressed surprise over how officers in the videos acted, claiming they did not understand what those officers were thinking or why they were acting the way they acted. This is part of a nationwide trend to excuse this behavior as the product of a few "bad apples" rather than as the natural, even inevitable, consequences of larger biases and power

[11] https://www.statista.com/statistics/191694/number-of-law-enforcement-officers-in-the-us/

dynamics at work across police departments and society more broadly and of the structures and traditions of policing itself. The view that systemic problems are the result of individual police officers not properly following their training or lacking the appropriate attitude or temperament for policing prevents departments from properly addressing these prevalent and continuing patterns.

From what we observed in videos and with conversations with instructors, we contend that the structure of policing as a whole, particularly the focus on control and the warrior mentality, reinforces the us-versus-them dichotomy in ways that tend toward escalation and grievous mistakes in judgment. These patterns of police behavior are inseparable from the history of policing and how police practices have evolved to the present day. It is also tied to larger cultural narratives which engender perceptions of People of Color, women, gender-expansive individuals, the differently abled, and working class people as inherently less worthy of respect, or inherently suspicious, dangerous, and in need of "control."

A lack of awareness of these broader cultural biases that influence interactions with the public in ways unconnected to individual professionalism underscore the need for incorporating the proposed course on History of Police and Race in America course into the training academy curriculum. ***Without this foundation training that addresses racism and other forms of oppression and an awareness of and sensitivity to the intersectional identities that people live, the training will fall back on the popular narratives and frameworks that it already presents throughout the training modules***

If we continue to treat the problem as individual aberrant behavior and try to address it through individual disciplinary actions that clearly are not working even when they are (rarely) imposed, we will make little progress. The problems are systemic and must be addressed through cultural change and system-wide training that recognizes the role that police structure and history plays in producing them.

RECOMMENDATIONS:

- We wholly support the addition of the proposed course on History of Police and Race in America into the training academy curriculum.
- The proposed training in the history of policing should be a foundational module which precedes the skills-building training modules. We would recommend that additional coursework be incorporated that addresses implicit bias and cultural humility.
- In a hierarchical organization like APD, incoming, lower-ranked cadets are not effective levers of cultural change. In addition to revamping the cadet training academy, APD needs to undertake retraining of current officers to

respond to these critiques of the current training. It is not enough to revise the training solely for new staff.

- New cadets are being introduced to an established system with an entrenched ethos and worldview. The police department leadership would need to commit and follow through with cultural change through policies, practices, and expectations in order to change the academy. The department can't change through training alone.

Pattern: Emphasis on Transactional Interactions

Many videos emphasized a "transactional" approach to interacting with the community, rather than long-term relationship building to develop genuine, authentic relationships; i.e., "The Memphis model."[12] ***The main goal of many of the videos appeared to be teaching officers how to protect and safeguard themselves against complaints, reduce potential liability, and be prepared for court appearances rather than engaging with the community authentically, humanely, and ethically.*** This transactional approach was evident across modules, where cadets were encouraged to perform a show of humanity or behave in productive and community-oriented ways in order to gain compliance or avoid fallout from community complaints or legal action against them. The theme, explicit in several videos, was clearly that officers should treat people with respect for a specific and self-interested goal, rather than teaching that officers must treat people with respect because that is what they are due. It is deeply problematic to train cadets that acting appropriately with the public has a price tag in the form of some expectation of return.

RECOMMENDATIONS:

- What was apparent throughout the videos was wide-scale dehumanization and a lack of community accountability. We encourage APD to explore what community accountability should look like in direct consultation with the most directly impacted communities.
- Undertake a community review of the academy training, including a review of all videos every two years until APD has established trust with the community, after which the review process could be extended to every five years.

Pattern: Inappropriate Use of Mass Media News Clips

[12] The Memphis model was cited in one of the Crisis InterventionI training videos, but it was unclear whether APD has fully adopted and integrated this model. We believe it should be a priority orientation for all units, not just Crisis Intervention. The ethos of the Memphis model --"they treated me like a human not a perpetrator" -- should be for everyone.

A final pattern we noted concerns the source of the video clips. It appears that APD acquires some core sets of training materials from third-party sources, with individual training officers given the option to find any additional or alternative material. It does not appear that they are provided with a great deal of support or resources in their quest to find appropriate materials; it appears they often resort to reaching out individually to colleagues within APD or in other police departments to identify body cam footage that may be applicable to their teaching objectives. As a result, a number of the videos were gathered from very problematic video sources. In addition to Verbal Judo, T-COLE, PERF--many of which were outdated and were rife with stereotypes--we saw footage that was taken from questionable websites such as www.TheYnc.com and Thin Blue Line.

Many of the training videos used are sourced from mass media news clips and other online or social media outlets. There are several problems with using such material. First, mainstream journalists' primary priority is capturing and holding attention, often accomplished by stirring fear or otherwise sensationalizing interactions. Frequently, videos were overlaid with sensationalized music as well as explanatory commentary which was, at best, tangential to the training needs of the curriculum, and, at worst, actively working against the objectives of the training by skewing and dramatizing the material. Even if such narratives are challenged by the trainer, the cadets will still hear the commentary which speaks in the voice of the "public" tacitly or explicitly authorizing the police behavior. The commentary often borrows from and perpetuates popular narratives about both the world and certain "kinds" of people, offering a cartoonish breakdown of people as either "good guys" or "bad guys," usually simply on the basis of their roles or racial/class/socioeconomic status. The commentary exaggerates danger in ways that feed into narratives the public already accepts about what kinds of people are "dangerous." This reinforces unquestioned biases the cadets may bring with them into the training. It is not possible to tell a complex story about historical structures and dynamics in a two-minute news clip. Instead, news outlets recycle the same stereotypes and stories we already know and believe. ***The point of the training videos is to educate; using sensationalized news clips is counterproductive to that goal due to the "reality effect" that visual media imparts.***[13]

Some of the training material was even taken from Hollywood movies. ***No serious or real training value can be gleaned from Hollywood fantasies about the world.*** Training material should remain focused on the actual world. A particularly problematic example was drawn from *The Last Samurai*, exemplifying the cherry-picking of Eastern Cultures out of context (also present in several forms in

[13] Bourdieu, Pierre, *On Television* (New York: New Press, 1998), 21. Bourdieu argues "that images...show things and make people believe in what they show." Not seeing images has the effect of hiding them not only from our view, but from our consideration as a part of reality.

other training material, such as "Verbal Judo" and "Mushin"). ***Training material should avoid cultural appropriation.***

A number of the videos depicted outdated and stereotyping pop culture. The "humor" clips included cultural appropriation, and/or reinforced dated notions of policing, masculinity, gender norms, People of Color stereotypes, veneration of guns, etc. The comedy clips would likely appeal to particular audiences and would not necessarily resonate with a younger, more diverse cadet class. These videos need to be updated and made more inclusive, if used at all.

RECOMMENDATIONS:

- Overall, the APD videos need to be updated and refreshed. The training team should look for more interactive, engaging training videos with more dynamic storytelling. We recommend utilizing fewer, high quality videos for multiple modules which allows cadets to focus on different aspects of learning using the same scenario. While each module has distinct learning objectives, reemphasizing important skills like tactical communications, crisis intervention, and de-escalation strategies should happen continuously throughout the training so cadets can more fully integrate those skills into their approach to each situation that arises.
- The APD Training Academy should rely less on videos and instead facilitate more interactive roleplay as a more effective teaching tool.

III. INSIGHTS INTO THE APD TRAINING ACADEMY CURRICULUM AND PROCESS

In addition to watching the videos individually, the review process gave the panel a window into the overall training framework. We have the following observations about the training structure and the sequencing of the training modules, and also about our review process:

Ineffective Adult Pedagogy

While training officers are clearly interested in and working at developing better adult learning pedagogies, Dr. Sara Villanueva's report to the APD clearly articulated a series of steps to improve this effort for the academy.[14] We recommend that the APD Training Academy reach out to and utilize the expertise to be found at the University of Texas, Huston-Tillotson University, Southwestern University, St. Edward's University, and Austin Community College for help both in finding or

[14] Cf., Villanueva, Sara *Review Analysis and Strategic Plan* for the Austin Police Department Training Academy, May 2020

developing training materials and videos and facilitating training pedagogy and curricula including training the trainers.

Our review of the videos and concomitant interaction with APD trainers also made clear to us that the trainer is critically important. The trainer should be versed not only in the penal code but also in broader human interaction skills and psychology as well as the larger cultural issues so instrumental in shaping how police interact with the public.

RECOMMENDATIONS:

- The APD Training Academy curriculum should be extensively revamped, as outlined in Dr. Villanueva's report.
- Properly vetted subject matter experts outside of the department (including community members with lived experience and expertise in these areas) should be brought in as trainers to augment the APD training team and help train the trainers.
- The Austin City Council should create a paid community advisory board that serves as a resource to APD on an ongoing basis to develop trust and transparency with the community about its policing policies, training and practices, and facilitate the broader use of community resources.

Lack of Overall Coordination

There appears to be a lack of overall coordination, communication, and shared learning techniques among the trainers. Each training module appears to be very siloed. Trainers do not have a clear idea what is being taught in other sections and don't appear to regularly communicate with each other in order to reinforce and integrate previous learnings into the training content. As a result, the training modules are somewhat repetitive without building and expanding on each other. More worrisome, as mentioned above, is that training videos seem to contradict each other when a video shows what NOT to do from a previous module but then is left unaddressed in the current module.

The lack of coordination between trainers of different modules exacerbated this dynamic of overrepresentation of People of Color in disturbing situations and "What NOT to Do" videos by allowing for a perhaps unintended proliferation of these kinds of videos without a specific awareness of the pattern on the part of the academy as a whole. This kind of unintended result argues forcefully for better coordination of the curriculum and closer interaction among the trainers. Too frequently over the course of this process we repeatedly heard the phrase from the trainers: "I don't teach that section... I don't know what they do in that section."

RECOMMENDATIONS:

- The training would benefit from less siloing and better integration among the training modules and better communication among the trainers so that they are aware what each trainer is teaching and how best to sequence the videos.

Ethics and Crisis Intervention Training Isolated

According to the training officers, "ethics in policing," including when and how officers should intervene when a fellow officer is doing something wrong is addressed in a separate half day "ethics" unit. Treating "ethics" as well as the Crisis Intervention Training as isolated and tangential aspects of the training and police work is a problematic approach that fundamentally misunderstands the way ethics works in society and for individuals. In all of the many "what NOT to do" videos, NONE of them shows any fellow officer intervening.
In general, we observed an overall lack of discussion about whether a particular action or response was ethical.

RECOMMENDATIONS:

- Rethink the order of the training. **The order in training matters.** Tactical communications and Crisis Intervention should be shown early on and be better integrated, and later interactions in subsequent videos should be evaluated based on Tactical Communication and Crisis Intervention tools. Ethics training should permeate every section.

Concerns About Process

In the beginning, as participants engaged in the video review process, there was confusion over our role and how much control/influence that we would have over the process. Many of us assumed that we would be seen as consultants and would be able to let our coordinators know what we needed in order to do our jobs well. However, we quickly ran into problems with being denied information that we requested. The academy trainers emphasized several times that we were unable to grasp the full context because we were only seeing some of the videos or the training material, but we were then denied access to the other material that would have helped us gain a greater understanding of the training.

Additionally we encountered other barriers to full participation. We understand that for many anti-racist initiatives, information is collected in a report and put in a drawer never to be seen again. We watched videos with extremely traumatic content and subsequently engaged in detailed and explicit discussions; it was important for us to make sure it was worth it. We wanted to be clear about where

our analysis and feedback was going, how our recommendations would be implemented, and how the process would be transparent to the community.

During the beginning of the process, our group experienced two major obstacles:

1. Unrealistic timeline laid out by the City of Austin
2. Austin Police Association intimidation tactics

At the beginning of this process, our group was tasked with an impossible two-month timeline for reviewing all the videos. We knew we could not possibly provide the level of quality feedback we felt was warranted given this rushed process. The City of Austin has a reputation for appearing to rush community input in order to provide a stamp of "good faith" effort, engaging in little to no communication as to how these recommendations would be implemented to generate much needed change. After several discussion sessions, we agreed to extend the process and enlist a new vendor to assist with facilitation; namely, Life ANew. Our group facilitators from Life ANew were Sherynn Paxton and Randy Chivas. Thanks to them, the relationship between APD and the community review board dramatically improved.

It should be noted that during the process of raising our critiques and adjusting to new procedures, we also experienced an attack from the Austin Police Association (APA) regarding our process. This led to further distrust in an already sensitive relationship between the community review board and APD staff. Our group made a good faith effort to engage in this review process after watching several community organizations terminate their relationship with the APD. This attack from APA demonstrated the existence of a faction within policing that is opposed to the transformation we are attempting to facilitate and is intentionally spreading a very different message than APD and city leadership have communicated about the need for change.

It is a devastating commentary on the current police-community relations that community members felt endangered while involved in this review process. Several community members were actively threatened by APA representatives. APD and the Austin City Council need to hold APA accountable.

After finalizing our panel's work, we continue to have questions about the transparency and accountability of this review process as well as the broader review process outlined in Resolution 66. Some questions are:

- How will the results of this review be presented to the community?
- What is the timeframe and process for APD to review, respond to, and implement the recommendations made by this panel?

- How do APD and the City of Austin plan to hold themselves accountable and be transparent to the community?

While this process was challenging, we were able to engage APD instructors who answered our questions patiently and offered creative solutions to implement the changes we were suggesting. There were indications that some of the APD staff were listening to the concerns we raised and working to understand the perspectives offered. Several of the trainers were present for almost all of the sessions, and collaboration with them helped to achieve better results. We believe such officers demonstrate a growing desire to engender important and essential change within the academy and the police department as a whole and share our vision of better training for future cadets and a better police department for Austin and its diverse communities.

IV. CONCLUSION

While this process has given us valuable insight into the cadet training videos, the contributing factors that led to the formation of this panel review and to Resolution 66 are much bigger than video selection. The patterns and biases that we witnessed in videos were pervasive through each module because they are reflective of the patterns and biases we see everyday, everywhere. These patterns and biases are indicative of the systemic racism that corrodes the integrity of our institutions in Austin and across the country, *including* the police. They cannot simply be edited out of a video. They cannot be "trained" away if there are no changes in how the department is structured and how police work is done. Changing these patterns and biases cannot solely be the responsibility of the newest, lowest ranked officers who are entering a well-established, hierarchical culture that was founded on and continues to perpetuate systemic racism.

Accountability is a foundational requirement in all of our recommended changes. While we fervently hope that APD leadership agrees to make the changes we have outlined in the detailed list of recommendations, the culmination of a thorough seven-month review process, we know that nothing will fundamentally change unless APD also implements a detailed accountability framework, the specifics of which are necessarily outside the parameters of this report. **We recommend that APD collaborate with the City of Austin's Reimagining Public Safety Taskforce to develop further recommendations for an accountability framework.**

Undoing systemic racism requires systemic changes. It requires a cultural shift towards community respect, accountability and trust. It requires showing trustworthiness before a crisis occurs, not in a slapdash effort after the fact. It requires deep listening, authentic dialogue, and consultation with the communities most directly impacted by police violence. It requires the courage and skill to hold

difficult conversations throughout the department and confront world views that perpetuate these biases rather than take a colorblind approach. It requires a shift from “what can I legally do?” to “what does the community need me to do?”

This video review process is but a step in the right direction. Implementing the recommendations from this process is another step. The department will have to decide how far it is willing to walk to make systemic change happen.

In conclusion, we would like to thank the following people who joined us in this review process: Kellee Coleman, Rocio Villalobos, Sherwynn Patton, Randy Chavis, Dr. Sara Villanueva, Anni-Michelle Evans, Gary Carillo, Patricia Bourenane, Lt. Eve Stephens, Farah Muscadin, and Veronica Ferren.

COMPLAINT
EXHIBIT D

Kroll | A Division of DUFF & PHELPS

MEMORANDUM

TO: Farah Muscadin
Director, Office of Police Oversight

Nuria Rivera-Vandermyde
Deputy City Manager

FROM: Kroll Associates, Inc.

DATE: February 26, 2021

RE: Preliminary Assessment of Austin Police Training Academy

Introduction

On November 12, 2020, the City of Austin's Office of Police Oversight (OPO), in consultation with the City Manager's Office (CMO), retained Kroll Associates, Inc. (Kroll) to review and evaluate the Austin Police Department (APD) on the extent to which forms of racism, bigotry, and discrimination are present in the protocols, practices, and behaviors of the APD. The initial phase of Kroll's review is limited to an assessment of the APD Training Academy (Academy), including its ability and readiness to prepare cadets for policing in a multi-ethnic, diverse urban population consistent with best practices.[1]

We understand that the City of Austin (City), as expressed through City Council Resolution 66 and the work of the Reimagining Public Safety Task Force, and as articulated in the 2020 Strategic Plan of the APD Training Academy, seeks a transformational police academy that transparently addresses issues of racial and gender equity, emphasizes de-escalation tactics that minimize the use of force, and moves away from a regimented, paramilitary culture into a learning academy that "promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships."[2]

In assessing the Academy to date, we have examined a series of independent reports (listed below) concerning various aspects of the training academy pertaining to culture, teaching methods, racial and gender equity, and course content; interviewed APD and Academy leadership, instructors and other active and retired personnel, former APD cadets, community leaders and activists, outside consultants and academic experts, and City personnel in the CMO, OPO, and Equity Office (further details below); and begun researching best practices in police training academies. We have also requested, received, and started reviewing a large volume of documents from the APD, including: Academy curricula, course content and lesson plans, instructor CVs, organizational charts, policy manuals, procedures and protocols, statistical data, cadet manuals, class schedules, recruitment materials, employee rosters with race, gender and other demographic breakdowns, and other documentation and data.[3]

[1] Kroll's retention is pursuant to contract MA 4400 PA210000018.

[2] Report of Dr. Sara Villanueva ("Review Analysis and Strategic Plan"), page 13 ("2020 Strategic Plan"), May 2020.

[3] The proposed curricula for DEI-related courses in the 144th cadet class are currently being developed by the Academy, pending the anticipated assistance of the new Organizational Training and Development Manager (ODTM), once onboarded.

In carrying out our mandate, we have specifically reviewed the following independent reports and assessments:

1. APD Training Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020)
2. APD Training Academy Curriculum Review by Dr. Miguel Ferguson (June 19, 2020)
3. Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications (December 14, 2020)
4. Racial Inequities and Institutional Racism, Joyce James Consulting (November 2020)
5. Community Report: Video Review Panel (January 18, 2021)
6. Community Video Review Panel (CVRP): APD Training Academy Videos, Final Report (January 14, 2021), and CVRP Summary Reports from July 2020 to November 16, 2020 (noting APD's concurrence with CVRP's recommendations).

We have also conducted over 45 interviews and meetings with a broad array of stakeholders (more than 70 individuals) over the past two months, including:

- Dr. Sara Villanueva ("APD Training Academy Review Analysis and Strategic Plan");
- Dr. Miguel Ferguson ("APD Training Academy Curriculum Review");
- City of Austin Equity Office staff ("Community + APD Equity Assessment Series");
- Community Video Review Panel ("Community Video Review Panel Report");
- Joyce James Consulting staff ("Racial Inequities and Institutional Racism");
- Austin community leaders (Just Liberty, NAACP, Austin Area Urban League, Austin Justice Coalition, and Texas Appleseed);
- Greater Austin Crime Commission;
- Civilian Police Review Commission;
- APD leadership (Chief Brian Manley and Chief of Staff Troy Gay);
- Academy leadership (Assistant Chief Brent Dupre, Commander Mark Spangler, and Commander Catherine Johnson);
- Academy supervisors – Training and Recruiting Units;
- Academy Instructors;
- Representatives of the Austin Police Association and its various affiliates (Austin Police Women's Association, Lesbian and Gay Peace Officers Association, and Texas Peace Officers Association);
- Former APD Training Academy cadets; and
- City of Austin officials and staff.

Additional interviews and meetings are ongoing.

Although our work remains in the developing stages, we offer this preliminary set of findings and recommendations at the request of the CMO given the sense of urgency facing City stakeholders in deciding whether and when to re-open the Academy for the 144th cadet class, which was originally scheduled to begin on March 29, 2021. The findings and recommendations in this memorandum are preliminary in nature and are based only on the information we have gathered and reviewed to date. As additional work and analysis remain to be done, the below findings and recommendations are subject to modification and revision as we gather and review additional information and as the Academy further updates and refines its preparations for the 144th cadet class.

Preliminary Findings

Based on our work to date, we highlight the following findings and observations that reflect on the readiness of the 144th cadet class in light of the City's stated objectives:

Diversity

- Academy leadership and supervisory staff currently reflects a significantly improved level of gender, racial, and ethnic diversity than in years past.
    - The ten APD personnel who make up the ranks of Academy supervisory staff in the Cadet Training Unit (Commander to Corporal) include three females (Commander, Lieutenant of Cadet Training, and Sergeant of Learned Skills); two African American males (Sergeant of Cadet Training and Corporal of Learned Skills); and one Latino male (Sergeant of Cadet Training). One of the females is also of Pacific Islander descent.
    - Similarly, the Recruiting Unit supervisory staff presently consists of five APD personnel from Commander to Sergeant, including two females (Commander and Sergeant of Recruiting) and two African American males (Lieutenant of Recruiting and Sergeant of Recruiting II).
    - The Recruiting Unit also includes significant racial, gender, and ethnic diversity at the officer and civilian ranks.
- Academy instructors on the whole are far less diverse. Although there is a sprinkling of female, African American, and Latino instructors, the officer ranks continue to be dominated by white males (although this appears to be slowly improving).
    - Leadership is well aware of the need to further increase racial, gender and ethnic diversity among the ranks of Academy instructors, and they are actively in the process of recruiting diverse officers to fill the ranks of current vacancies.
    - There seem to be a variety of reasons why the Academy has had difficulty increasing diversity among its pool of instructors, including financial disincentives (a loss of overtime and shift differential pay), physical fitness requirements, and a perception that instructor positions lack prestige or a pathway to promotion. Kroll notes, however, that other professional benefits counter these perceived disincentives, including better work schedules, additional training opportunities, access to Academy exercise facilities, and the satisfaction of teaching future officers.[4]
    - Although the Chief has authority to unilaterally order transfers to the Academy in an attempt to increase diversity, he has traditionally been reluctant to do so.
- The APD Recruiting Unit contains a diverse team of recruiters and background investigators and has developed a broad and effective outreach program that extends to other cities and states targeting historically black colleges and universities, Latinx organizations, military veterans, and women's organizations, among others. As a result, the list of 95 eligible candidates who are

[4] See APD Training Academy Curriculum Review, page 4 (discussing Instructor Surveys) (June 19, 2020).

currently expected to attend the 144th cadet class consists of one of the most diverse group of recruits in recent APD history, as reflected in the below chart (updated 12/10/2020):[5]

Gender	Asian/Islander	Black	Hispanic	Other	White	Grand Total	Percentages
Female	1	3	2	0	10	**16**	17%
Male	4	10	29	3	33	**79**	83%
Grand Total	**5**	**13**	**31**	**3**	**43**	**95**	
Percentages	**5%**	**14%**	**33%**	**3%**	**45%**		

- These future cadets are undoubtedly being recruited by other sources of employment. It would be a lost opportunity in addressing long-term diversity goals if this diverse cadet class were to become diluted.

- In addition, the 143rd cadet class, which graduated in October 2020, was 50% white, 33% Hispanic, 12% Black, and 2% Asian. This compares somewhat favorably to the 2019 census estimate, which shows Austin as 48% white, 34% Hispanic, 8% Black, and 7% Asian.

- There are recent indications that APD leadership is making an intentional effort to enhance knowledge and understanding of racial equity issues. Within the past year, APD leadership attended multiple anti-racism workshops in an effort to address and better understand issues of systemic and institutional racism within the department. For example, in February 2020, Academy leadership and cadet instructors attended *Beyond Diversity: Courageous Conversations About Race*, led by Dr. Glenn Singleton. In September 2020, 18 APD leaders attended a two-day "Groundwater Analysis of Racial Inequities" workshop led by Joyce James Consulting LLC. By all accounts, both seminars were well received, with some talk among APD leadership of possibly incorporating one of these workshops into cadet training or annual training for Academy instructors.

- The Academy appears to do a good job of training cadets on LGBTQ issues, with two hours each of course content devoted to policing and transgender issues taught by an openly transgender instructor, and an introduction to LGBTQ issues taught by Sergeant Michael Crumrine, the president of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement. The Academy also appears to do a good job recruiting in the LGBTQ community. The APD as a whole, however, needs improvement in training and educating officers on a department-wide basis.

- The Academy has developed a valued mentorship program for women cadets to help prepare and guide them through the Academy.

[5] Data and classifications provided by APD.

Paramilitary Culture

- The Training Academy remains a predominantly paramilitary training model, albeit with a greater emphasis than in years past on a classroom-based, learning-institute style of teaching.
    - Although most Academy leaders describe the Academy as a "hybrid" model closely associated with a paramilitary model but tampered with a mix of adult-learning courses, the reports of Dr. Villanueva and Dr. Ferguson, and interviews of Academy supervisors and instructors, suggest the paramilitary model continues to predominate.
    - Three frequently cited examples of the Academy's transition away from a paramilitary format include: First, the Academy has eliminated the requirement that cadets "make a hole" whenever an instructor or supervisor walks through the hallway (cadets were formerly required to stand at attention against the wall so that senior personnel could get through). Now, cadets are encouraged to extend a handshake, introduce themselves, and engage in conversation. Second, cadets are no longer required to wear camouflage, military-style attire as the uniform of the day in Academy. Third, there is less one-on-one, in your face stress actions (yelling and screaming), which are now more group focused.
    - Cadet surveys administered by Dr. Miguel Ferguson after the 141st and 142nd cadet classes suggested that most courses continue to be taught in a highly formalistic manner, with cadets yelled at, berated, and degraded by instructors in certain classes. Moreover, according to Academy instructors and supervisors with whom Kroll spoke, the Academy continues to impose behavioral modification exercises (i.e., group calisthenics and exercise drills at the sandpit) as collective discipline for cadet mistakes and compliance failures.
    - To date, it appears that the adult learning-style of teaching as discussed in Dr. Ferguson's and Dr. Villanueva's reports is not in widespread use and that efforts to update course content with adult learning strategies are on hold pending the hiring of Dr. Villanueva's replacement as Organizational Training and Development Manager (ODTM).
- APD leadership has expressed its belief to Kroll that a paramilitary structure is an essential component of police culture and paramount to ensuring cadets are attuned to the chain of command and know what to do and how to respond in crisis situations.
- The majority of APD and Academy leadership have questioned the assertion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a "warrior" mindset, which leads to an "us vs. them" mentality of officers on the front lines fighting crime.
- Although APD leadership dislikes the "warrior vs. guardian" nomenclature, the new Commander of the Academy said she believes APD should train its cadets to be "70% guardians and 30% warriors." "We are guardians, but we have to maintain a warrior mindset to stop immediate threats when they occur."
    - As an example, the Commander suggested to consider an officer assigned to protect school children. The officer is there as a guardian, but if a school shooting occurs, the officer needs to know how to become a warrior on the spot. That can only be learned at the Academy.

- The Academy has modified some past abusive practices, such as "Fight Day" and Stress Reaction Testing (SRT), in an attempt to reduce cadet injuries, lower the rate of attrition (which disproportionately impacted females and cadets of color), and create an environment more conducive to success and graduation.
    - Following the 141st cadet class, "Fight Day" was changed to "Will-to-Win" and is presently more structured and controlled than in years past, according to Academy leadership. The sparring instructors in the boxing ring are instructed to fight at 50% capacity (all cadets wear protective gear) and with no intent to injure cadets. The stated purpose of Will-to-Win is to ensure that cadets develop the mental fortitude and courage to keep fighting no matter what and to not give up, such as when encountering an acute situation while waiting for backup. The Will-to-Win exercise requires cadets to fight back and not quit for at least three minutes, the average time it typically takes for backup to arrive (the boxing component occurs after a series of other intense physical exercises designed to tire and stress cadets prior to entering the boxing ring).
        - Although the name has been changed, the essence of the exercise has not materially changed. It occurs prior to cadets being taught any self-defense or other hand-to-hand defensive tactics, which places them at a distinct, and arguably unrealistic disadvantage against skilled and experienced sparring instructors.
        - APD believes it is essential that cadets who have not experienced being physically assaulted or punched before arriving at the Academy should experience this for the first time in an Academy-controlled environment, and not in a hostile situation while on patrol after graduation.
        - Kroll notes, however, that APD personnel were unable to provide a persuasive rationale as to why such an exercise could not reasonably occur towards the end of Academy after cadets have received all essential defensive tactics training.[6]
    - Two white male instructors who were the most abusive during "Fight Day" (prior to the 142nd cadet class), especially to female cadets, have been removed from the Academy and replaced. The Learned Skills Unit now has a highly regarded (within APD) female sergeant and African American corporal in supervisory roles.
    - The Academy has eliminated SRT, a series of intense physical exercises that occurred on day one and pushed cadets to their physical and psychological limits to see how they acted under extreme stress. This frequently resulted in a number of cadets dropping out and appeared to operate as a sort of hazing ritual to force out cadets who "could not take it." Because Academy leadership determined that cadets were not being provided the tools to succeed and must be allowed to build physical capacity gradually, SRT was replaced with TBX – team building exercises.
        - According to the lesson plan, the goal of TBX is "to create a physically and mentally stressful environment through exercise and problem solving," which "will serve as an important introduction to the importance of teamwork and the need for strong

[6] In interviews with civilians who had accompanied APD officers on ride-alongs, it was noted that one officer commented that, if a physical conflict were to occur, he was going to "win" the encounter. Statements such as these give the impression of a "warrior" mindset among APD patrol officers.

leadership in law enforcement" consistent with the "philosophy, values, vision, and mission of the Austin Police Department."

- The Academy has also eliminated a steep hill climb that was used for SRT and disciplinary purposes and which caused a lot of ankle injuries. This has been replaced by TBX and modified discipline that requires cadets to carry a 15 or 20-pound sandbag to classes for a day if they fail an exercise, as well as collective discipline (behavioral modification exercises) in which all cadets perform extra physical fitness drills when any one cadet fails (this occurs in the first trimester of the Academy as a way of demonstrating that, when one officer messes up, it affects all officers).[7]

- The report of the Community Video Review Panel (CVRP), released on January 18, 2021, also highlighted concerns regarding the Academy's paramilitary culture as reflected in many of the Academy's training videos. A few of these concerns are highlighted in the below excerpts:

> *The us-versus-them bias was explicit in some of the videos --i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:*
>
> - *An enhanced focus on officer safety over the safety of the community as a whole,*
> - *A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"*
> - *An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and*
> - *Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.*
>
> . . . .
>
> *We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.*[8]

[7] These collective discipline sessions are sometimes referred to as "smoke sessions."

[8] "Community Report: Austin City Council Resolution 66: Austin Police Department Training Video Review Panel" (January 18, 2021).

Curriculum Review / Incorporating Adult Learning Theories

- Dr. Miguel Ferguson's preliminary curriculum review report of June 2020 urged the Academy to develop and design curriculum that adopts more of an adult learning or active learning model of teaching and move away from the rigid, formalistic, lecture-and-listen format that dominates many Academy classroom courses.[9]
    - Dr. Ferguson is awaiting guidance from Dr. Sara Villanueva or her replacement as ODTM before completing the final report, which he says will contain a comprehensive set of resources for instructors.
    - APD and Academy leadership have had little, if any, follow-up with Dr. Ferguson (with the exception of his co-leading a teaching symposium in December) concerning how to better incorporate adult learning theories and creative teaching methods into course content for the upcoming 144th cadet class.
- The report completed by Dr. Villanueva in May 2020 affirmed the need for the Academy to better develop and incorporate adult learning theories into its curriculum and teaching methods.
- The Academy is in the process of revising Cadet Training Instructor job descriptions (as recommended by Dr. Villanueva) to include appropriate expectations, duties, and responsibilities around teaching effectiveness.
- Although Academy instructors are actively in the process of revising course content and lesson plans in preparation for the 144th cadet class, Kroll has been informed that the focus is on ensuring that all course content is compliant with state-mandated TCOLE and BPOC requirements.
    - The sergeant and lieutenant in charge of Cadet Training are actively reviewing all course content for DEI-related courses; however, their reviews are likewise limited to ensuring that TCOLE and BPOC mandates are met, and do not pertain to whether lesson plans and curriculum content incorporate adult learning and other effective teaching strategies.
- The schedule for the 144th cadet class includes large blocks of time devoted to such courses as Penal Code (40 hours in Week 3), Arrest Search and Seizure (40 hours in Week 5), and Traffic Code/Crash Investigation (40 hours in Week 7), which requires instructors (often the same instructor) to teach non-stop for much of that time, and requires cadets to absorb a huge amount of information in a condensed period of time.
- When asked if the Academy is proactively revising the existing curriculum and lesson plans to incorporate more adult learning (active learning) strategies recommended by Dr. Villanueva and Dr. Ferguson, the answer provided is that Academy instructors and supervisors are awaiting further guidance and input from the new ODTM, whenever that person is hired to replace Dr. Villanueva.
- Nevertheless, a majority of Academy instructors and supervisors attended two teaching seminars within the past few months that addressed how to more effectively present course content and teach in ways that enhance learning. In particular, Academy instructors and supervisors recently attended:

[9] Dr. Ferguson's report specifically focused on course content for the following courses: Cultural Diversity, History of Policing, Professionalism and Ethics, Fair and Impartial Policing, Services for the Deaf and Hearing Impaired, Multiculturalism and Human Relations, Spanish, Transgender, LGBTQ, and Racial Profiling.

- A teaching symposium in December (co-led by Drs. Ferguson, Villanueva, and Sloan) that provided additional guidance on adult learning methods as applied to courses related to diversity, equity, and inclusion;[10] and
- A Transformational Training seminar led by a team of instructors at Command Presence (https://commandpresence.net/), a police instructional training firm. The 8-hour seminar provided ideas and methods for evidence-based teaching methods designed to counteract "death by Power Point" and other uninspiring teaching techniques. This was well-received by Academy staff, and the Academy plans to require this training annually for all Instructors.
- Academy instructors with whom Kroll spoke noted that many Academy courses already include a lot of scenario-based and role play content that is effective at teaching cadets how to apply what they are learning.

- Although APD and Academy leadership have expressed a willingness to work with outside civilian content experts from local colleges and universities in appropriate courses (such as the History of Policing and Race in Austin), it is unclear how much work is being done at present to bring in outside content experts and other community voices. For the most part, Kroll has found APD reluctant to incorporate a lot of community/civilian input and distrustful of non-police personnel (including academic experts such as Dr. Villanueva and Dr. Ferguson).
- Academy leadership is currently in the process of selecting and purchasing an automated Learning Management System (LMS) to help facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. However, APD is yet to finalize selection and procurement of such a system and appears to be leaning towards funding a less robust system due to budget concerns.

Community Input and Participation

- The length of the planned 144th cadet class has been cut from 32 weeks to 28 weeks. In doing this, the Academy plans to (a) cut all intermediate courses, which will be taught over the first two years following graduation from the Academy, and (b) add 30 hours of Community Engagement programming that was not previously included. The 28-week training program will include all state-mandated TCOLE and BPOC requirements and some additional tactical training courses.
  - Although Kroll has not yet seen the precise details of the planned 30-hours of community engagement programming, the stated intent is to expand upon the level of participation and input from community leaders who will be invited to speak to the cadets. The Academy had previously devoted seven one-hour blocks of time to guest appearances from community leaders, which purportedly will be expanded to 30 hours.
  - Some of the organizations APD is currently seeking to engage with are noted below:
    - Life Anew Restorative Justice
    - Measure Austin
    - Citizen Led Austin Public Safety Partnership (CLASP)

[10] According to Dr. Ferguson, although many instructors expressed openness to further transitioning to an adult learning environment, the feedback from the symposium was disappointing (survey results were mixed with only nine surveys completed).

- Mobile Loaves & Fishes
- Mexican Consulate
- Refugee & immigrant Outreach
- President for the Texas Association of the Deaf
- Transgender and Gender Marker Project
- Austin Justice Coalition
- Reimaging Public Safety Task Force
- National Alliance on Mental illness (NAMI)
- The Settlement Home for Children
- Mothers Against Drunk Driving (MADD)
- The Jeremiah Project
- The African American Youth Generation

- Community Video Review Panel (CVRP): The recently completed Community Report of the Video Review Panel found that the vast majority of the approximately 110 training videos reviewed over a seven-month period were not only outdated and "disappointing in quality" but also contained "unprofessional or sensationalistic commentary" and perpetuated harmful stereotypes "against Black and Brown communities." The report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues.
- Although difficulties were encountered initially in attempts to establish trust and communication between the APD and community representatives, the end result demonstrated a healthy collaboration, with several Academy leaders and instructors actively participating in the review panel's work. As a result of that approximately seven-month effort, the Academy has accepted all the CVRP's recommendations concerning the video content and is actively making changes to its video library in response to the panel's recommendations.
    - The Academy is currently in the process of eliminating all videos that were found to be offensive or insensitive to community concerns and replacing them where possible with more up-to-date and non-offensive depictions of subjects interacting with more diverse officers.
    - In addition, Academy instructors are actively searching for appropriate replacement videos that more effectively depict the right way to do things, as opposed to videos demonstrating what not to do, as was the case with many of the videos reviewed by the panel.
- APD is currently in the process of establishing a formalized system to comprehensively review, with community input, all future video content that has not otherwise been reviewed by the CVRP.

Professionalism and Passion of Instructors

- Kroll has been uniformly impressed with the passion and commitment to teaching and the mission of policing exemplified by the Academy's current leaders and instructors. They appear genuinely open to ideas that will help make them better instructors and want cadets to succeed and develop into first-rate police officers.
- Kroll notes that changing the culture of an institution and long-term notions embedded into the way things have always been done is no easy task. While most instructors and supervisors state they

are open to working with content experts and incorporating active learning strategies, they are passively awaiting guidance and input from leadership, including the hiring of a new ODTM, to help advise them on changes to teaching methods and course content.

- Nevertheless, Academy staff appears open to incorporating outside civilian content experts as instructors in certain courses (e.g., History of Policing and some DEI-related courses), if done in coordination and partnership with APD personnel.
    - At present, however, except for History of Policing and Race in Austin (discussed below) there does not appear to be any intentional or clearly-articulated plans to incorporate outside content experts (e.g., criminal defense attorney to talk about search & seizure law from a defense perspective; homeless advocate to discuss issues faced by the homeless population; mental health expert to address relevant issues, etc.)
    - The Academy has agreed to schedule eight hours to the History of Policing, including four hours on the History of Policing and Race in Austin, a new course designed by two University of Texas law professors and recommended by OPO. We understand that APD is currently in the process of arranging for an outside content expert to co-teach this course to the 144th cadet class with an African American member of Academy staff.

Cadet Injuries

- According to Appendix I of the Community + Equity Assessment Series report, and as confirmed by Kroll through APD-provided data, cadet injuries over the past five years have fluctuated as follows:

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	1
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	1
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	2
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	1
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	3
Covid-19	--	--	--	--	--	56
TOTAL	**90**	**123**	**77**	**116**	**98**	**68**

- According to data provided by APD, from 2015 to 2020, at least 509 cadet injuries occurred at the Academy. The racial and ethnic breakdown shows that, of these 509 injuries, 348 (68.37%) were to white cadets, 85 (16.7%) to Hispanic cadets, 57 (11.2%) to Black cadets, and 19 (3.73%) to Asian cadets. As noted in the Equity Assessment report, "[w]hile the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the

percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%)."[11]

- Academy leadership noted that better reporting and documentation of cadet injuries may have contributed to the increased numbers of reported injuries in recent years.
- The Academy requires a healthy dose of physical fitness and defensive tactics in an effort to prepare cadets for any number of crisis situations they may confront at some point in their careers as police officers. As noted by Chief Manley, "we pepper spray our cadets because officers need to know what it is like. We have our cadets engage in boxing because we hire people who have never fought before, and we want them to be okay when this happens after they become officers."

Graduation Rates

- Graduation rates at the Academy over the last five years show similar racial and gender disparities:

Academy Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[12]

- APD's data illustrates that Black cadets are less likely than their peers to graduate from the Academy, and more likely to be injured, than any other race. Female cadets also have lower graduation rates than white and Hispanic male cadets. As a result, Black and female cadets graduating from the Academy are underrepresented when compared to the population of Austin as a whole.
    - In terms of statistical significance tests (Chi-square analyses) overall Black cadets are significantly ($p < .01$) less likely than Non-Black cadets to graduate over the entire period

[11] "Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications," page 9 (December 14, 2020).

[12] According to the Report of the Community + APD Equity Assessment Series, City of Austin Equity Office, December 14, 2020, page 8, APD has recruited one Asian woman who has successfully completed the Academy within the past five years.

examined here.[13] This pattern was only true for Black cadets and not any other racial/ethnic group.

- As noted elsewhere, however, there appears to be a shift in this long-term pattern. The race differences were not significant in the last two cadet classes (142M and 143). Thus, the overall race-graduation differences (particularly Black cadet failure patterns) were driven by pre-2020 patterns.
- Overall, female cadets are also significantly ($p < .01$) less likely than male cadets to graduate over the entire period of study. However, the gender differences were not significant in the last two cadet classes (142M and 143). Thus, the overall gender-graduation differences were driven by pre-2020 patterns.
- Limited statistical power inhibits our ability to determine whether Hispanic females and Black females fail to graduate at a divergent rate than all other groups. However, each factor alone (race and gender) were clear predictors of graduation in the pre-2020 trends.

- Kroll notes, however, that the positive changes in the diversity of Academy leadership and to some of the more physically and psychologically intense components of the Academy (i.e., elimination of SRT and modification of "Fight Day" to "Will to Win"), as well as a distinct philosophical shift among Academy leadership to actively encourage all cadets to succeed, suggests that the Academy is conscious of and working to eliminate these inequities.
- The unique relationship that develops between APD recruiters and cadets is currently underutilized. Recruiters typically get to know cadets well and develop a more personal relationship with them than do Academy instructors. In the past, APD recruiters would reach out to a cadet if he or she left the Academy to obtain feedback and discuss what happened. We are told that this practice has been discontinued.

Crisis Intervention Training

- The Academy has greatly improved its crisis intervention team (CIT) training in recent years. The 144th cadet class schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness (NAMI), helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families." Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety." (https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs).
- The CIT model is a police-led, collaborative response for behavioral health crises that involves training patrol officers to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis and to refer those individuals to appropriate services, as opposed to conducting an arrest, when possible. The goals of CIT programs are to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services

[13] The Chi-Square results were derived from the Pearson Chi-Square statistic. Chi-square analyses is based on the null/alternative hypothesis counterfactual framework that assesses whether there are differences across categorical measures (e.g., race and sex with graduation). The corresponding p-value follows the conventional framework of .01 (or 99% confidence). Thus, significant findings suggest the differences across categories (e.g., Black vs. non-Black with graduation) is beyond chance where $p < .01$.

for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges. These programs have most traditionally been used to address individuals experiencing mental health- or substance use-related crises.

- CIT training not only provides officers with more tools to do their jobs safely and effectively, but also improves their knowledge of mental illness and community resources.
- Several evaluations have found that CIT training improves officer knowledge surrounding behavioral health-related challenges, reduces stigma associated with behavioral health, and increases officer empathy and confidence in their ability to successfully intervene in a crisis incident.
- Researchers have found that CIT training successfully increases officer awareness of behavioral health services within their communities and their support for referring individuals in crisis to these services.
- Evaluations show that CIT training increases officer familiarity with de-escalation techniques and support for de-escalating crisis events.

De-escalation / Use of Force Training

- Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum.
- ICAT is an evidence-based best practice designed by the Police Executive Research Forum (PERF) to help police officers "safely and professionally resolve critical incidents involving subjects who may pose a danger to themselves or others but who are not armed with firearms." (https://www.policeforum.org/assets/icattrainingguide.pdf). In its original format, ICAT training is designed as a 16-hour training block.
- ICAT training instructs police officers in de-escalation tactics and critical thinking skills for the management of potentially volatile police-citizen encounters, encouraging the integration of crisis recognition and intervention, communication skills, and operational tactics in police responses. This training is designed for patrol officers responding to circumstances involving persons in crisis – that is, individuals that may be behaving erratically due to mental health concerns, substance use, situational stress, and/or intellectual/developmental disabilities.
- The ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries (Engel et al., 2020).
    - Although officers have fewer options when dealing with threats involving firearms, ICAT is a training guide designed to fill a critical gap in training police officers how to respond to volatile situations in which subjects are behaving erratically and often dangerously, while unarmed or armed with a weapon other than a firearm (e.g., knife, baseball bat, rock, etc.). As explained by PERF, the ICAT Training Guide "includes model lesson plans and support materials (including Power Point presentations, videos, and other resources) in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics. ICAT then integrates these skills and provides opportunities to practice them through video case studies and scenario-based training exercises."

- ICAT's course content includes Legal Concepts, Critical Decision-Making, Crisis Recognition, Communication, and Tactics. Students learn to demonstrate key verbal communications skills that are critical to defusing (de-escalating) tense situations and gaining voluntary compliance. Students also learn to explain concepts such as "tactical pause," distance plus cover equals time, tactical repositioning, and continual assessment, all of which are essential to de-escalating encounters with citizens in crisis.

Preliminary Recommendations

As noted above, the APD and Training Academy have implemented a number of steps to address issues raised by the City, the community, and independent consultants. The Academy has made significant strides in diversifying its leadership and instructors to better reflect the community APD serves, although it has more work to do at the instructor level. The group of leaders and instructors presently at the Academy are highly professional, passionate about what they do, and genuinely interested in making the Academy a best-in-class institution.

That said, APD has been reluctant to embrace some of the recommendations provided to date concerning course content and teaching methods, and an even stronger reluctance to change the paramilitary nature of the Academy in any fundamental way. The relationship between APD leadership and certain segments of the community remain tense and broken, with several community activists unwilling even to engage with the current Chief. As with many police departments across the country, the police professionals feel like they are under constant attack and not given credit for much of the good work and public service they do, while the many and varied community voices most engaged in criminal justice and police reform efforts feel disrespected and unheard.[14]

But there are moves in the right direction. First, creating the Organizational Development and Training Manager (ODTM) position, so that an educational expert can review curriculum and work with instructors to develop ways to incorporate creative adult learning strategies into the training, was a proactive, positive initiative that should pay long-term dividends. Moreover, providing the ODTM with the civilian equivalent rank of Commander, if backed by leadership, will help further transition the Academy into a true adult-learning educational institution. Second, the collaborative work between APD and the Community Video Review Panel (CVRP), while difficult and turbulent at times, ultimately produced an excellent example of police-community collaboration that can and should form the foundation of future relationship building between APD and the citizens it serves. Kroll knows of no other academy in the United States that has evaluated its training videos for instances of bias and inappropriate content in this manner. The lessons learned and hard work by the Austin community and police officials in this effort is an example and practice that every police academy in the nation should emulate. Third, the decision to expand the planned 144th cadet class to include approximately 30 hours of outside community input and participation in cadet training, and the addition of course content such as The History of Policing and Race in Austin – to be taught in part by a locally-based subject matter expert – are concrete steps that further demonstrate a commitment by APD to improve its community relationships and train cadets in a manner more attuned to the community policing, guardian model that the City and the community desire.

[14] Kroll notes that Chief Manley has expressed to Kroll a willingness to engage with the community despite resistance from some vocal community activists. Additionally, the Acknowledgement section of the Joyce James Consulting Report commended the willingness of the Chief and his command team, and other sworn and civilian staff, to engage in open and honest dialogue that her team facilitated about institutional and structural racism. This would appear to be a step in the right direction for APD to begin honestly addressing racism institutionally.

There are a number of additional and necessary measures that can be addressed in the short run, including teaching methods and incorporation of adult learning strategies, substantive course content, community engagement, input and participation, and increased use of civilian content experts. Other more fundamental issues, such as significant changes to Academy culture, philosophy, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run with existing leadership, fundamental change cannot realistically be expected to happen overnight.

For these reasons, we have divided our preliminary recommendations into short-term and long-term measures, as noted below.

Short-term Measures

To begin addressing the key concerns expressed by the community and the findings, analysis, and recommendations of the reports and assessments conducted to date, and based on our preliminary findings noted above, the following steps should be completed before the start of the 144th cadet class:

- The City of Austin should immediately hire a replacement for Dr. Sara Villanueva as the Academy's ODTM. This person needs to have a clearly articulated mandate to assist Academy instructors in implementing and incorporating adult/active learning models throughout the ten courses examined as part of Dr. Ferguson's curriculum review and as set forth in the Level 1 and 2 recommendations in his June 2020 report, as well as implementing the recommendations of Dr. Villanueva in her Review Analysis and Strategic Plan report of May 2020, pages 10-11.
    - To help facilitate the transition to a new ODTM, the City should arrange contractually for Dr. Villanueva to assist the new ODTM in getting fully acclimated and on-boarded (Dr. Villanueva has expressed a willingness to assist in this manner). Although the position is officially ranked as the civilian equivalent of Commander, there was significant friction between sworn Academy staff and the ODTM position this past year. Although we understand state law currently prevents sworn personnel from being directed by civilian personnel, and while legislative efforts should be made to change that law, in the short term APD leadership needs to make clear that the ODTM speaks on behalf of leadership.
- The City should also, as soon as practicable, hire and on-board a Training Specialist to work with the ODTM and Academy Commander in updating and standardizing curriculum and support materials to better reflect adult and active learning strategies and eventually help transition the Academy to a blended civilian and police-led training academy with outside civilian instructors and APD Academy instructors teaching cadets, individually or jointly as appropriate for the course content.
- APD should expedite the procurement process to begin implementation of an automated Learning Management System (LMS) that will facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a

best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class.

- The Academy should formalize an internal review panel responsible for reviewing each instructor's syllabi and curriculum and suggesting ways to improve each class in the Academy. The panel should include the ODTM and Training Specialist, along with selected Academy and field supervisors, instructors, officers, and community representation. The panel could start with reviewing and evaluating video presentations of the training that is intended to be presented to the next cadet class.
    - With the assistance of the ODTM and Training Specialist, and in coordination with the Commander and Academy supervisors, all course content, including courses taught by the Learned Skills Unit and Cadet Training Unit, need to be evaluated for ways to incorporate DEI content into all aspects of training. The current siloed approach, which essentially isolates DEI courses from police tactical training, should be modified to ensure consistency of messaging and a fundamental emphasis on the humanity and complexity of the citizens APD serves and protects. "Checking the box" once a course is completed needs to be resisted. Teaching about multiculturalism and the importance of community relations in week one will be undermined if we then train "warriors" to counter all threats in later weeks. All courses should be reinforced, formally and informally, throughout the cadet training program.
    - Cadets must be thoroughly and effectively trained on all proper defensive tactics, arrest and control techniques, crowd control, and so on. But the messaging throughout the Academy needs to consistently emphasize the ethical responsibilities of policing, teach a sensitivity to legitimate community fears that are based in history, and recognize the complexity and nuance of the human beings that cadets will interact with on a daily basis. Cadets must understand that more than 95% of day-to-day policing is more akin to social work than policing. The single most important skill that a police officer can develop is the ability to effectively interact with and relate to a diverse community of people in ways that are honest, authentic, and transparent. Implicit messages, whether from training videos or course content, suggesting that certain people or neighborhoods are more "dangerous" than others, must be resisted and countered.
- Establish a formal process to continue a community review of police training videos that were not reviewed previously by the recently concluded Community Video Review Panel. This should include a process to re-review training videos every two years or so. Once a process is formalized, ongoing consultation should occur between APD and the CVRP concerning any new training videos proposed for use in future training courses to ensure that full community input is embedded into Academy planning and implemented in training.
- "Will-to-Win" should be converted to a "Self-Defense" exercise near the end of Academy training, after cadets have been properly taught and tested on all appropriate defensive tactics, hand-to-hand encounters, and similar tactics.[15] This "Self-Defense" session should be video recorded to ensure that appropriate levels of force are being used by the assigned instructor according to Academy protocols. We understand and agree with the need to prepare cadets for aggressive and hostile encounters, but "Will-to-Win" sends a message that implicitly affirms the "us vs. them"

[15] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

mentality that must be eliminated. There is a difference between properly preparing cadets for certain types of encounters and giving them the tools to protect themselves, but another thing to message that the object in hostile encounters with a member of the public is to "win" – which implies that someone must "lose." Officers must be trained on how to properly protect themselves and others, but proper messaging is crucial to ensure that the training exercise does not overtake the fundamental purpose of policing.

  - Kroll recommends a defensive tactics program that has cadets learn the basic skills starting early on in the Academy, where cadets work with instructors and other cadets to learn proper defensive tactics before they are tested near the end of training, either with a controlled/supervised period of time in a ring or other scenario-based training. This will assist in team building and allow cadets to learn and build the skills to succeed.
  - APD spends hundreds of thousands of dollars to recruit and conduct background investigations of cadets. Accordingly, every effort should be made to have cadets succeed by giving them the tools to do so. Self-defense testing and challenges should occur after PT training when recruits are warmed up and stretched out to help reduce injuries.
  - Ensuring use of the phrases "defending oneself" and "self-defense" will also help address the "warrior vs. guardian" issue.

- The use of the sandpit and having cadets carry sandbags as punishment for "messing up" should also be modified or eliminated.[16] The shift from SRT to TBX is a positive development; team building exercises are important and necessary, as is physical fitness and conditioning. We understand that there is a certain level of physical and psychological stress associated with policing and with training. But the old-school manner of incessantly yelling and screaming at cadets, and other humiliation tactics, serve little purpose other than to instill a military-like, bootcamp atmosphere that is counterproductive to preparing officers to serve as guardians of the community.
- Physical fitness, team building, and applying stressful situations to cadets should be completely separated from any academic training. Having cadets do extra pushups, sit ups, and other exercises while properly attired in athletic gear during formalized physical training programs (when cadets have properly stretched and warmed up) will reduce injuries. Once PT is concluded, the cadets should be in an academic learning environment in classrooms free of physical and unnecessary psychological stress. The rigors of learning course work are stressful enough. Instead of carrying around sandbags for mistakes or shortcomings, for example, cadets could be required to write an administrative report about their failure and how they plan to address it. This will incentivize cadets to correct their mistakes while helping develop the skill most officers will be spending considerable time doing throughout their careers (writing reports), while also documenting a non-subjective review of the cadet's progress.
- As part of its community engagement programming, the Academy should proactively reach out to a wide variety of community leaders and activists who are willing to work productively with APD in presenting genuine community perspectives and concerns about policing. This sort of community participation can be a mutually beneficial exercise that begins to slowly break down barriers of communication and enhance the learning experiences of the cadets.

[16] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

- To its credit, the Academy has scheduled "The History of Policing and Race in Austin" into the 144th cadet class curriculum and has arranged for a locally based subject matter expert to co-teach the course with an African American APD sergeant. APD should ensure that the course covers the content outlined in the OPO-approved curriculum and is reinforced in other courses throughout the Academy.
    - Serious consideration should be given to coupling this training with community outreach and immersion strategies, such as having cadets spend time in a food pantry or homeless shelter, attend community meetings out in the neighborhoods, meet with local community leaders, and spend time visiting mental health and substance abuse programs.
- The Academy should thoroughly review all other DEI-related courses and determine which may benefit from an outside, more academically oriented civilian content expert or a community perspective. Most of the DEI courses can be taught more effectively pursuant to a co-facilitation model that includes input and perspectives of civilian instructors and/or community members in both the design and delivery of the training. These courses should be co-taught by APD instructors in cooperation with appropriate subject matter academic experts or community allies who can provide direct community examples, round out perspectives, and foster valuable community partnerships. It is important that the people presenting in these courses have credibility with both the community and law enforcement.
- Chief Manley should consider tapping into the resources of his existing officer base to temporarily assign some diverse officers of exceptional skills to assist with Academy instruction, particularly in courses where a diverse perspective would be beneficial and worthwhile (one of the recurring criticisms of the cadet surveys conducted by Dr. Ferguson was that the Academy often had non-diverse instructors teaching classes like multiculturalism and cultural diversity). For example, there is currently a diverse pool of officers in the Recruiting Unit who know and have existing relationships with cadets and who, with some additional training, could easily supplement training staff and enhance the diversity of instructors teaching these courses.
- The Academy should consider the feasibility of incorporating Beyond Diversity by Dr. Glenn Singleton or the Groundwater Analysis training workshop by Joyce James Consulting LLC into the Academy curriculum and/or as part of annual training for Academy instructors and supervisors (and eventually all officers).
- The Academy should reinstitute the practice of following-up with a cadet who leaves the Academy for any reason. The recruiter who had developed the relationship with the cadet might be able to identify an opportunity for the cadet to return to the Academy in a later class if circumstances allow. It also provides an opportunity for feedback to identify any changes needed in the training or recruiting process to ensure future success.
- The Academy should develop a mentorship program for all cadets, especially recruits of color, that will provide additional support for cadets and help them succeed at the Academy. These efforts would assist Commander Johnson with her stated desire to see Academy staff become more supportive and encouraging in helping all cadets succeed.
- The City should require an ongoing, independent review of the Academy by an outside monitor once the 144th cadet class begins to ensure implementation of the above recommendations and to help ensure that further adjustments and improvements are made moving forward.

- Kroll understands that many would like to see a completely revised training program that has addressed all issues before another class starts. We caution, however, that until instructors are actively training recruits, it will be difficult to fully assess whether the changes and recommendations currently being made or adopted are sufficient.

Long-Term Measures

To address some of the cultural and attitudinal concerns expressed by the community leaders we spoke with, and as set forth in the CVRP report, Equity Assessment report, and the other consultant reports addressing APD training, we recommend that, absent exceptional circumstances, the following measures be implemented prior to the start of the 145th cadet class:

- To build on the positive collaboration between the APD and the community in evaluating for bias and other inappropriate content in the APD's training videos, APD and the City should consider working with a professional media literacy educator to help develop effective teaching videos moving forward that will have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy and behavior. While it's one thing to analyze what one sees and hears, it's another thing to develop effective teaching videos as tools to undo engrained bias, worldviews and attitudes that we all are born into, and how we have come to "interpret" living realities. It will take real knowledge and skills to overturn what is so embedded in the recruits that come to the Academy. This will be true regardless of race, gender, or class status.
    - A renowned national leader in "media literacy" (e.g., Professor Renee Hobbs, founder of the Harrington School of Communications and Media at the University of Rhode Island or a similar expert from an Austin-area college or university) could help bring credibility to this process.
- APD and the Academy should consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers. A common problem in many police departments is that, once certain practices are taught in the Academy, the new officer learns a "different way" of doing things on the street. This undermines what is taught at the Academy and compromises an academy's efforts in staying up to date with best practices and any positive reform measures implemented at the cadet training level.
- APD should develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level, to increase the number of African American, Hispanic/Latinx, Asian, and female instructors assigned to the Academy.
- Academy class schedules should be revised to eliminate 40-hour blocks of course content to such things as Penal Code, Traffic Code, and Arrest Search and Seizure. These courses should be spread out over the length of the Academy, so that no more than two to four hours per day, three days a week are devoted to these important, but often dry and legally important subjects.[17] Cadets need the opportunity to study and absorb the material that is taught, with an opportunity to ask questions and be tested in a progressive, cumulative manner.

[17] We understand that this recommendation may require approval from the Texas Commission on Law Enforcement (TCOLE), and thus we have not included it as a short-term recommendation to be implemented prior to the 144th cadet class.

- The Academy should expand its physical fitness training to a daily regimen, to be scheduled first thing in the morning (and separated from all academic content – except for physical training associated with self-defense and other defensive tactics).[18]
- Based on Koll's initial review, we have learned that the physical fitness requirements at hire may not be predictive of the physical fitness requirements in the Academy, and the physical fitness requirements in the Academy may not positively correlate with the physical fitness requirements of police officers post-graduation. For example, we have been told that many female applicants pass the initial physical fitness test and many African American male applicants fail the initial physical fitness test, yet both of these groups seem to struggle with the physical fitness requirements at the Academy. We also understand that there are essentially no physical fitness requirements of police officers once they have graduated from the Academy. As such, further analysis and adjustments of these relationships are required to ensure that pre-Academy, Academy, and post-Academy physical fitness standards are consistent with successful job performance. These potential inconsistencies lend further credence to Kroll's suggestions about physical training requirements and sequencing at the Academy, although this will only partially address questions about the physical fitness required by APD.
- The Academy should develop a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to officially starting at the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.
- Although we understand that the ICAT training has been adopted department wide as required in-service training for all sworn personnel, APD should require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. Departments that have widely adopted and implemented ICAT in other parts of the country have seen a marked decrease in use-of-force incidents.
    - Up-to-date de-escalation training needs to be delivered department wide, reinforced through use-of-force policy, supported by field supervisors, and included as a component of use-of-force reviews. Without a holistic approach, training in the academy will be "undone" once cadets graduate and are in the field.
    - We also recognize the importance of the Community Video Review Panel recommendations to this training. Some of the videos used in the Academy's existing ICAT training were offensive to the community because it reinforced stereotypes involving Black women and communities of color overall. PERF emphasizes that ICAT training is flexible and adaptable, encouraging that agencies be creative in how they incorporate the training modules into new or existing programs on de-escalation, tactical communication, or crisis intervention. Many agencies use different videos and scenarios that better fit within their organizational and community context. These videos could easily be changed without losing any training content.
    - The ICAT training provides comprehensive instruction on critical thinking, crisis recognition, tactical communications, continual assessment, and scenario-based training.

[18] Kroll understands that the current training facility supports all three of the City's public safety departments and does not currently have the capacity to implement this recommendation without the creation of more lockers and shower space. Accordingly, we have placed this as a long-term (as opposed to short-term) recommendation.

As the Academy is in the process of implementing the CVRP's recommendations regarding use-of-force videos, once there is a consensus among the CVRP that the videos used are gender and racially appropriate, it will enhance the existing ICAT curriculum and provide an appropriate equity lens to APD officers during de-escalation training.

- To promote instructor wellness and avoid burnout, low morale, and reduced job performance, there needs to be some recovery time built into the intervening period between cadet classes. We recognize police departments always strive to reach their complement of new sworn officers, but it is important to be mindful that instructors have little down time from teaching between the end of one cadet class and the beginning of another (see Dr. Villanueva report, page 9).
- Although achieving perfection is not possible, as the Academy and APD are human institutions, building a long-term system of internal and external review of training methods and Academy effectiveness is essential to institutionalizing the search for excellence. Training police officers to become community-oriented, empathetic, and compassionate guardians of the public in a dynamic and diverse city, while promoting officer health and wellness, is a constantly evolving process. For this reason, police academies should be in a constant state of review and improvement.

COMPLAINT
EXHIBIT E

KROLL

Austin Police Department: Review and Assessment of Training Academy

April 23, 2021

Prepared for
City of Austin, Office of Police Oversight / City Manager's Office

Status
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Contents

1 INTRODUCTION 1

2 EXECUTIVE SUMMARY 3

3 BACKGROUND AND CONTEXT 7

4 BEST PRACTICES FOR POLICE ACADEMIES 11

5 APD TRAINING ACADEMY – FINDINGS AND ANALYSIS 31

5.1 Academy Diversity 32

5.2 Academy Culture 38

5.3 Teaching Methods / Adult Learning 51

5.4 Cultural Competency Training / DEI Content 55

5.5 Community Input and Participation 66

5.6 Professionalism of Instructors 70

5.7 Cadet Injuries / Graduation Rates 70

5.8 Crisis Intervention Team Training 77

5.9 Additional De-escalation / Use of Force Training 80

5.10 Non-English-Speaking Residents and Persons with Disabilities 81

5.11 Field Training Officer Program 81

6 COMMUNITY FEEDBACK 84

7 APD TRAINING ACADEMY – RECOMMENDATIONS 92

7.1 Short-term Measures 93

7.2 Long-Term Measures 97

8 APD IMPLEMENTATION / ACTION PLAN 101

9 CONCLUSION 108

10 APPENDIX 109

10.1 Kroll Project Team 109

1 INTRODUCTION

On November 12, 2020, the City of Austin's Office of Police Oversight (OPO), in consultation with the City Manager's Office (CMO), retained Kroll Associates, Inc. (Kroll) to review and evaluate the Austin Police Department (APD) on the extent to which forms of racism, bigotry, and discrimination are present in the protocols, practices, and behaviors of the APD. The initial phase of Kroll's review is limited to an assessment of the APD Training Academy (Academy) – specifically, the Academy's ability and readiness to prepare cadets for policing in a multi-ethnic, diverse urban population consistent with best practices.[1]

The City of Austin (City), as expressed through City Council Resolution 66 and the work of the Reimagining Public Safety Task Force, and as articulated in the 2020 Strategic Plan of the APD Training Academy, seeks a transformational police academy that transparently addresses issues of racial and gender equity, emphasizes de-escalation tactics that minimize the use of force, and moves away from a regimented, paramilitary culture into a learning academy that "promotes effective, innovative, and inclusive instruction that advances sustained learning for current and future officers by utilizing the most current evidence-based strategies and incorporates diverse perspectives through community partnerships."[2]

In performing this review, Kroll reviewed and considered the reports and assessments noted below that examined many of the issues addressed in this report, including the training academy's culture, teaching methods, approaches to racial and gender equity, and course/curriculum content:

1. APD Training Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020)
2. APD Training Academy Curriculum Review by Dr. Miguel Ferguson
    a. Preliminary Report (June 19, 2020)
    b. Final Report (April 5, 2021)
3. Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications (December 14, 2020)
4. Racial Inequities and Institutional Racism, Joyce James Consulting (November 2020)
5. Community Report: Video Review Panel (January 18, 2021)
6. Community Video Review Panel (CVRP): APD Training Academy Videos, Final Report (January 14, 2021), and CVRP Summary Reports from July 2020 to November 16, 2020.

In addition, we conducted over 60 interviews and meetings with a broad array of stakeholders (more than 100 individuals), including, but not limited to, the following:

- Dr. Sara Villanueva ("APD Training Academy Review Analysis and Strategic Plan");
- Dr. Miguel Ferguson ("APD Training Academy Curriculum Review");
- City of Austin Equity Office staff ("Community + APD Equity Assessment Series");
- Community Video Review Panel ("Community Video Review Panel Report");
- Joyce James Consulting staff ("Racial Inequities and Institutional Racism");
- Austin community leaders (Just Liberty, NAACP, Austin Area Urban League, Austin Justice Coalition, Texas Appleseed, MEASURE);
- Greater Austin Crime Commission;
- Community Police Review Commission;

[1] Kroll's retention is pursuant to contract MA 4400 PA210000018.

[2] Sara Villanueva, "Review Analysis and Strategic Plan" (Austin Police Department Training Academy, May 2020), 13.

- APD leadership (Chief Brian Manley, Interim Chief Joseph Chacon, and Chief of Staff Troy Gay);
- Academy leadership (Assistant Chief Brent Dupre, Assistant Chief James Mason, Commander Mark Spangler, Commander Catherine Johnson, and Division Manager Dr. Anne Kringen);
- Academy supervisors – Training and Recruiting Units;
- Academy instructors;
- Representatives of the Austin Police Association and affinity associations:
    - Austin Police Women's Association
    - Lesbian and Gay Peace Officers Association
    - Texas Peace Officers Association
    - Amigos en Azul Police Association
- Texas Commission on Law Enforcement (TCOLE) leadership;
- Former APD Training Academy cadets and newly sworn officers;
- Austin City Council;
- City of Austin officials and staff;
- Austin Equity Office;
- Austin community representatives – presentation / community forum.

Kroll also reviewed a large volume of documents from the APD and the City, including Academy curricula, course content and lesson plans, instructor CVs, organizational charts, policy manuals, procedures and protocols, APD General Orders, statistical data, cadet manuals, class schedules, recruitment materials, employee rosters, and other documentation and data. Finally, Kroll conducted extensive research on best practices in police training academies around the United States.

This report details our findings and recommendations concerning the APD Training Academy. Section 2 contains an Executive Summary of the report. Section 3 explains the background and context that led to this review. Section 4 provides examples of evidence-based best practices in police training techniques that have been proven effective in changing police culture, reducing use of force incidents, enhancing police responses to mental health crises, and improving police-community relations. Section 5 outlines our detailed findings and observations concerning key areas of focus. Section 6 summarizes the community input and feedback Kroll received throughout our review process. Section 7 provides a series of recommendations to improve APD's ability to prepare cadets for policing in a diverse urban environment in a manner that fosters police-community relations, enhances public safety, and minimizes incidents of conflict and force. The recommendations include short-term measures to be implemented before the 144th cadet class and long-term measures to be implemented before the 145th cadet class. Section 8 outlines APD's up-to-date efforts to implement the recommendations. Finally, Section 9 provides Kroll's brief concluding remarks.

Kroll wishes to thank the City of Austin, the many community representatives with whom we spoke, and the Austin Police Department for their cooperation and assistance in this review. While everyone may not agree with each of Kroll's findings and recommendations, Kroll has attempted to describe the issues fairly and, where applicable, identify the need for reforms. It has been a pleasure for Kroll to speak with so many talented people and professionals among City staff, the APD, and the community. The commitment, dedication, and good faith of everyone with whom we interacted were readily apparent.

2 EXECUTIVE SUMMARY

In this report, Kroll recommends a shift away from a stress-oriented military-style academy toward a resiliency-based approach supported by adult learning and student-centered instruction. We believe that, consistent with national best practices, it is essential that the APD Training Academy adopt a guardian-centric approach that emphasizes service to the community, while at the same time preparing officers to effectively react and respond to crisis situations when they occur. We encourage APD to become an evidence-based learning organization, where changes in Academy training are rigorously tested and research findings are routinely shared with Academy staff to inform continual improvements in the curricula offered.

In assessing the APD Training Academy, Kroll focused on many key areas, including those highlighted below. Although the primary emphasis of our review has been on the readiness of the planned 144th cadet class in light of the City's stated objectives, we also examined the long-term potential for developing a transformational, best-in-class police academy. Below is a brief summary of our key findings and observations:

- **Academy Diversity**. Academy leadership and supervisory staff currently reflects a significantly improved level of gender, racial, and ethnic diversity than in years past. While Academy instructors in the Training Unit are less diverse than the supervisory staff, the department is moving in the right direction. The Recruiting Unit also contains a diverse team that has developed an effective outreach program, which targets historically black colleges and universities, Latinx organizations, women, and military veterans. Moreover, the list of cadet candidates who are currently expected to attend the 144th cadet class consists of one of the most diverse classes in recent APD history.
- **LGBTQ+ Training**. While cadets who have graduated from the Academy within the past several years have received excellent training on transgender and LGBTQ issues, this training has not been pushed out to the department as a whole. Consequently, officers who graduated from the Academy more than seven years ago—including the "Fifth Floor" leadership at APD—have not received any department-sanctioned training on understanding the unique issues associated with the LGBTQ+ community. The Academy also needs to improve awareness of LGBTQ issues to the tactical trainers in the Learned Skills Unit.
- **Anti-racism Training**. APD and Academy leadership recently participated in two excellent anti-racism workshops, and the Academy is incorporating Groundwater Analysis Racial Equity training into the curriculum of the 144th cadet class, as well as future Academy classes.
- **Academy Culture**. The culture of a police training academy reflects the culture of a department and impacts the mindset and approach to policing that newly sworn officers adopt upon graduation. Culture is perhaps the most difficult thing to change in any organization. How cadets are treated, how they are expected to act, and what explicit and implicit messages are communicated to cadets all impact the type of officer a training academy develops prior to sending newly sworn officers out into the community. In conducting this review, Kroll noted a divergent set of views regarding current Academy culture. On the one hand, some former cadets who were forced to resign from the 137th and 140th cadet classes described an Academy culture that was "toxic", "abusive" and "combative" and teaching methods that embraced "intimidation tactics." Instructors relentlessly ridiculed and mocked certain cadets during physical training, with an apparent bias against female cadets, which was primarily driven by the perception that particular cadets could not meet the required physical

fitness expectations needed to become an APD officer. On the other hand, many APD officers we interviewed believe that the manner in which the Academy prepares cadets is necessary and that the allegedly abusive practices noted above are not reflective of the true Academy culture. Most APD officers contend nevertheless that stressful tactics are essential to preparing cadets for what can be a dangerous and pressure-filled job. These officers contend that, without an element of physical and psychological stress applied during training, cadets will be unprepared for the many stressful encounters they will inevitably confront, at the risk of public safety and officer safety.

- **Paramilitary Training Model**. The Academy at present remains a predominantly paramilitary training model. APD leadership believes that some aspects of a paramilitary structure are essential to ensure cadets are attuned to the chain of command and clear lines of authority, and to prepare cadets to effectively respond in crisis situations. While Kroll agrees that training officers to deal with real world threats, which can include exercises that elevate a cadet's heart rate and induce the physical effects of being placed in fear and under stress, is necessary, this cannot be at the expense of training cadets to be community-oriented guardians at their core.
- **Best Practices – Resiliency-based Training**. As noted in Section 4 of this report, police academies can establish a guardian-centric culture that focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, "resiliency-based" training has been shown to have many positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression. By strengthening cadets' critical decision-making skills, communication, and emotional intelligence skills, cadets will be better prepared to handle the complex situations they are likely to face in the field. We believe this can occur without a strictly regimented, paramilitary foundation.
- **Adult Learning**. The Academy needs to further develop and incorporate adult learning theories into its curriculum and shift away from the rigid, formalistic, lecture-and-listen format that has previously dominated many training courses. Although the Academy currently incorporates much scenario-based teaching into its training, many of its classroom-based courses can be improved. To address this, on March 15, 2021, the Academy hired Dr. Anne Kringen as a Division Manager to fill the role held by the prior Organizational Development and Training Manager. With the backing of Interim Chief Joseph Chacon, Academy staff have been instructed that Dr. Kringen is equivalent in rank to a Commander. One of Dr. Kringen's immediate priorities is to work with instructors to ensure that (1) all lesson plans are updated, (2) content is current and corresponds appropriately to the objectives of the course, and (3) adult learning and innovative teaching techniques are incorporated into course content. On April 1, 2021, Dr. Kringen provided Kroll with an outline of her plan to update all course content. She will also be exploring Academy culture and helping to find the proper balance between academic-style learning, physical and tactical training, disciplinary measures, and chain-of-command structures.
- **Use of Outside Content Experts**. APD has historically been reluctant to incorporate outside community and civilian input into its training programs. However, more recently Academy leadership has expressed a willingness to work with community representatives and outside content experts from local colleges and universities to co-teach or guest speak in appropriate courses. The new Division Manager is currently reviewing course content and meeting with instructors to determine which courses—particularly diversity, equity, and inclusion (DEI) related courses—can effectively be co-taught with an outside subject-matter expert. This will also be an area of responsibility for the newly created Academy Curriculum Review Committee, which will include two outside academic experts and four community representatives.

- **Curriculum Review**. Kroll reviewed the DEI curriculum review report of Dr. Miguel Ferguson and examined the lesson plans, curricula, and teaching materials provided by Academy staff for courses that address cultural competency training, including the History of Police and Race in America, Cultural Diversity, Professionalism and Ethics, Fair and Impartial Policing, Multiculturalism and Human Relations, Interacting with Transgender Individuals, Law Enforcement and the LBGTQ+ Community, Racial Profiling, Spanish, Interacting with Individuals who are Deaf, and Traumatic and Acquired Brain Injuries. Overall, these courses collectively provide content that is crucial to enhancing the cultural competency of newly sworn officers. Kroll and Dr. Ferguson identified gaps in and provided recommendations for some of the course materials.
- **Community Engagement / Lived Experiences Programming**. The Academy plans to include 37 hours of Community Engagement programming, including approximately 30 additional hours that were not previously included. Although the precise details are currently being developed, it will greatly expand participation and input from the community. The Division Manager is currently working with Academy staff to proactively identify and contact community partners that will provide an invaluable perspective to cadet training. This additional emphasis on community engagement, combined with added course content such as "The History of Police and Race in America" are positive additions to Academy instruction that place a necessary focus on the importance of meaningful police-community interactions and mutual understanding.
- **Community Video Review Panel**. We highlight the recent work of the Community Video Review Panel (Panel), which over seven months found that many of the Academy's training videos contained "unprofessional or sensationalistic commentary" and perpetuated harmful stereotypes "against Black and Brown communities." The Panel report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues. The Panel's recommendations addressed several systemic, community impact, and instructional concerns. Although difficulties were encountered initially in attempts to establish trust and communication between APD and community representatives, ultimately it was a healthy collaboration, with several Academy leaders and instructors actively participating in the Panel's work. APD ultimately accepted the Panel's recommendations and is actively modifying its video library in response. Moreover, APD is currently establishing formal protocols for a continuation of the Panel's work.
- **Instructor Professionalism**. Kroll has been uniformly impressed with the passion and commitment to teaching exemplified by the Academy's current leaders and instructors, who appear genuinely open to ideas that will make them better instructors and help cadets develop into first-rate officers.
- **Cadet Injuries and Graduation Rates**. Based on an examination of the last six years of data, we found that, although nearly 73% of cadets entering the Academy successfully graduate, the likelihood of graduation varies significantly across cadets by race and sex. Specifically, Black and female cadets are statistically less likely to graduate compared to cadets of other races and male cadets, respectively. Overall, the likelihood of graduation is not significantly impacted by injuries within the Academy. However, two groups of cadets significantly differ in their likelihood of graduation and timing of injuries. Specifically, cadets who were female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprised roughly 23% of the classes, were significantly less likely to complete the Academy training, compared to non-Black

males (White males, Hispanic males, and Asian males), which comprised roughly 77% of the classes.

- **Crisis Intervention Team (CIT) Training**. Consistent with best practices, the 144th Academy schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families." Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety."
- **De-escalation Training**. Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum. This also is consistent with best practices, as ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries. Combined with other de-escalation training at the Academy, including verbal de-escalation and aspects of CIT training, the Academy devotes approximately 31 hours overall to de-escalation training. This is slightly above the national average.
- **Field Training Officer Program**. Overall, APD's FTO Program is well structured and documented. However, to further strengthen the program and ensure that what officers learn on the street after graduating is consistent with what they learn in the Academy, and to address other concerns raised by the City and the community concerning the FTO Program, we have included additional long-term recommendations.

Recommendations. Section 7 of the report provides recommendations to improve APD's ability to prepare cadets for policing in a diverse urban environment in a manner that fosters police-community relations, enhances public safety, and minimizes incidents of conflict and force. The short-term measures address adult learning strategies, course content, community engagement, and increased use of content experts, among other things. More foundational measures, such as changing Academy culture, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run, fundamental change cannot realistically be expected to happen overnight. Accordingly, our recommendations include short-term measures to be implemented prior to the start of the 144th cadet class and long-term measures that should be achievable by the 145th cadet class.

Finally, Section 8 outlines APD's up-to-date efforts to implement the recommendations. The planned 144th Academy now encompasses 34 weeks and includes (1) 30 additional hours of community engagement programming, (2) a two-week community immersion orientation program, (3) anti-racism training, (4) a newly designed course on the history of police and race to be co-taught with a local subject-matter expert, (5) near daily physical fitness training, (6) fewer week-long blocks of technical course content that will allow for more effective implementation of adult learning strategies, and (7) a formalized process of community and civilian input into training content to ensure that issues of racial equity and procedural justice are paramount considerations in all aspects of cadet training.

Several of Kroll's recommendations have already been completed or are in the process of being implemented (subject to verification), with a plan in place to complete implementation before the start of the 144th cadet class. Other recommendations are in progress and will need to be evaluated once the new Academy classes begin.

3 BACKGROUND AND CONTEXT

Kroll's assessment of the APD Training Academy arose as part of the City of Austin's efforts to reimagine policing following a series of recent national and local events that shined a spotlight on police-community relations throughout the United States. As with many other U.S. cities that are consciously re-examining policing following the tragic killing of George Floyd and resulting protests this past summer, a series of alleged incidents and reports concerning the Austin Police Department over the past couple of years prompted the City, through Council resolutions and other calls for action, to more closely examine all aspects of policing, starting with how APD trains its officers. This section highlights some of the recent events, statistics, and reports that have provided the background and context for Kroll's review.

Reports of Racial Profiling and Bias. As outlined in City Council Resolution No. 20191205-066 ("Resolution 66"), adopted December 5, 2019, several internal and external reports have highlighted alleged racial disparities across various facets of APD's law enforcement operations that have disproportionately impacted communities of color. For example, according to state-mandated racial profiling reports from 2010 to 2018,[3] APD officers were more than twice as likely to search Black and Latino drivers than white drivers during traffic stops despite no greater likelihood of discovering contraband.

The Center for Policing Equity reported in 2016 that Black and Hispanic motorists made up a significantly higher share of discretionary stops than white motorists.[4] According to APD discretionary arrest data from 2017, APD officers made discretionary arrests of Black citizens at more than twice the rate of white or Latino residents; Blacks and Latinos were disproportionately arrested for driving with an invalid license compared to other races and ethnic groups, and Black residents were more than seven times as likely to be arrested for low-level marijuana offenses than white residents.[5] Moreover, in 2019, the department reportedly received eight formal complaints and 40 informal complaints of racial profiling, more than three times as many as in 2018.[6]

Alleged Racial Insensitivity by APD Officers. On October 30, 2019, the City received an anonymous complaint against former APD Assistant Chief Justin Newsom which alleged that, on several occasions over the past decade, Newsom used explicitly racist language in reference to President Barack Obama, former City Council Member Ora Houston, and former APD Assistant Chief Frank Dixon, among other persons of color. This complaint also alleged that then APD Chief Brian Manley and other high-level police officials knew of Newsom's use of racially derogatory language but did not act on the information.[7] While an independent investigation into these claims could not corroborate the specific alleged incidents ascribed to Newsom, it reported that "racist and sexist name-calling and use of derogatory terms associated with race and sex persists" within the department and "there is a very high level of fear of retaliation" for speaking

[3] https://www.austintexas.gov/page/racial-profiling-reports

[4] Phillip A. Goff et al., "The Science of Policing Equity: Measuring Fairness in the Austin Police Department" (New York, NY: Center for Policing Equity; Washington, D.C.: Urban Institute, 2016), https://policingequity.org/images/pdfs-doc/Austin_PDI_Report_2016_Release.pdf.

[5] https://www.austintexas.gov/edims/document.cfm?id=300349

[6] Bryce Newberry, "APD Racial Profiling Complaints More than Tripled from 2018 to 2019, Report Says," *KVUE*, February 28, 2020, https://www.kvue.com/article/news/local/apd-racial-profiling-complaints-more-than-tripled-from-2018-to-2019-report-says/269-eb531b4f-1970-4032-bdb3-2989772a798f.

[7] Russell Falcon, "Anonymous Complaint to City of Austin Alleges Former APD Assistant Chief Used 'n Word' to Refer to African-Americans," *KXAN Austin*, November 7, 2019, https://www.kxan.com/news/local/austin/austin-city-manager-approves-outside-investigation-into-complaints-against-former-apd-assistant-chief-department/.

out against officers, as well as "quiet resistance from those interviewed in the form of evasiveness, misdirection and deflection."[8]

Moreover, in November 2019, a complaint received by the Office of Police Oversight alleged that a female Assistant Chief made disparaging remarks towards other officers, including one statement in which, referring to a Hispanic detective, the Assistant Chief allegedly said, "Maybe now more of your people [Hispanics] can get a job since college is no longer a requirement."[9] The complaint also alleged that officers rarely challenge their superiors on their misconduct "for fear of retaliation."[10]

Demographic Analysis. An *Austin American-Statesman* review of APD demographic data in 2016 found that, on average since 2005, approximately 69% of APD officers have been white, 20% Hispanic, 9% Black and 2% Asian/Pacific Islander.[11] This compared to 2015 U.S. census data, which showed that Austin's population at that time was approximately 48% white, 35% Hispanic, 7% Black, 7% Asian/Pacific Islander, and 3% other races and ethnicities.

According to the APD demographic data as of December 2020, the diversity among sworn personnel has not materially changed. Among all ranks, APD officers are 66.7% white, 21.8% Hispanic, 7.3% Black, and 3.0% Asian/Pacific Islander (compared to 2019 census data, which reflects that Austin's population is 48.3% white, 33.9% Hispanic, 7.8% Black, 7.7% Asian/Pacific Islander, and 3.5% multi-racial).[12] Moreover, as noted in the below chart, the higher ranks of the Department are far less diverse, as white officers constitute 70% of sergeants, 79.7% of lieutenants and 84.2% of commanders, while other racial and ethnic groups make up significantly lower percentages of the higher ranks.

		Ranks by Ethnicity [1]							Ranks by Gender [1]	
	# Personnel by Rank	White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Assistant Police Chief	6	50.0%	33.3%	16.7%	-	-	-	-	66.7%	33.3%
Police Commander	19	84.2%	5.3%	-	5.3%	5.3%	-	-	94.7%	5.3%
Police Lieutenant	69	79.7%	11.6%	5.8%	1.4%	-	1.4%	-	88.4%	11.6%
Police Sergeant	172	70.3%	15.1%	9.3%	1.7%	1.7%	1.7%	-	88.4%	11.6%
Police Corporal/Detective	401	68.1%	20.7%	8.0%	1.5%	0.7%	1.0%	-	87.8%	12.2%
Police Officer	1,104	64.6%	24.1%	7.3%	3.0%	0.5%	0.4%	0.1%	89.8%	10.2%
All Ranks	1,771	66.7%	21.8%	7.6%	2.5%	0.7%	0.7%	0.1%	89.1%	10.9%

NOTE: [1] Only Sworn Officers who appear to be currently allocated are included in this analysis.

Protocols and Training. The department has also been criticized in recent years for not properly emphasizing de-escalation in training protocols, leading to avoidable incidents involving excessive use of force. A 2016 "Use of Force Project" report revealed that, at least as of 2016, the APD did not require de-

[8] Lisa Tatum, "Austin Police Department Independent Investigation: Fact Investigation" (The Tatum Law Practice, April 2020), http://www.austintexas.gov/edims/pio/document.cfm?id=338889.

[9] https://joplin3-austin-gov-static.s3.amazonaws.com/production/media/documents/2019-1308_NFC_Stephenson.pdf

[10] *Ibid*.

[11] Katie Hall, "For Last Decade, Police Had More Whites, Fewer Hispanics than City Has," *Austin American-Statesman*, December 24, 2016, https://www.statesman.com/news/20161224/for-last-decade-police-had-more-whites-fewer-hispanics-than-city-has.

[12] https://www.census.gov/quickfacts/fact/table/austincitytexas/LND110210

escalation strategies, ban chokeholds or strangleholds, restrict shooting at moving vehicles, require exhausting all means before shooting, or require comprehensive reporting on use of force.[13] In an effort to combat this issue, a task force commissioned by the mayor released a report in 2017 recommending that the Academy include and specifically emphasize de-escalation training. As a result, in 2018, APD guidelines began placing greater emphasis on the use of de-escalation strategies.[14]

Past criticism has also been directed at the APD Training Academy, including complaints that the Academy promotes a toxic culture among recruits. For example, in 2018, a group of former cadets alleged that the Academy encouraged a culture of abuse towards citizens.[15] One former cadet alleged that instructors told cadets that they would "punch them in the face" if they said that the reason they wanted to be police officers was to help people. Another former cadet alleged that their “instructor repeatedly degraded the homeless and prostitutes, referring to them as ‘cockroaches’ and suggesting they ‘find a transient’ if [cadets] were bored and wanted a felony arrest.” Several cadets also alleged they were injured during training as a result of abusive practices.

Allegations of Excessive Uses of Force. The Center for Policing Equity’s 2016 report also found that APD was more likely to use force in African American and Latino communities, including severe force. These racial disparities persisted even after controlling for such factors as crime, education, homeownership, income, youth, unemployment, and poverty rates.

There have been many additional allegations of excessive uses of force against APD officers in recent years. For instance, two officers were charged criminally and terminated in 2018 for allegedly using a Taser weapon on an unarmed man who was in a kneeling position. Body camera footage captured the incident, but the officers were later found not guilty.[16] In addition, on April 24, 2020, Michael Ramos died after being shot by an APD officer as Ramos attempted to leave the scene of an encounter.[17] The officer has since been indicted on murder charges.[18] Finally, following the death of George Floyd in Minneapolis and the ensuing protests across the country that followed, APD was involved in three incidents in which non-violent protesters were struck by less-lethal police fire: a man in his 20s who was in critical condition, a teenage boy who was hit in the forehead, and a pregnant woman who was hit in the abdomen.[19]

Finally, a report released in September 2019 by the Human Rights Clinic of the University of Texas School of Law alleged that “Austin police are violating international human rights standards during mental health

[13] Samuel Sinyangwe, “Examining the Role of Use of Force Policies in Ending Police Violence” (Police Use of Force Project, September, 2016), https://dx.doi.org/10.2139/ssrn.2841872.

[14] Andrea Ball and Tony Plohetski, “New Austin Police Policy Emphasizes Alternatives to Using Force,” *Austin American-Statesman*, January 21, 2018, https://www.statesman.com/NEWS/20180121/New-Austin-police-policy-emphasizes-alternatives-to-using-force.

[15] Tony Plohetski, “Are Austin Police's Cadets Trained to Be 'Warriors' or 'Guardians'?,” *KVUE*, April 24, 2018, https://www.kvue.com/article/news/local/are-austin-polices-cadets-trained-to-be-warriors-or-guardians/269-545190415.

[16] Russell Falcon, “APD Officers Fired after Previously Cleared of Excessive Force Charges,” *KXAN Austin*, March 18, 2019, https://www.kxan.com/news/local/austin/apd-officers-fired-after-previously-cleared-of-excessive-force-charges/.

[17] Austin Sanders, “Activists Call for Firing of APD Leadership in Wake of Officer Involved Shooting,” *The Austin Chronicle*, April 27, 2020, https://www.austinchronicle.com/daily/news/2020-04-27/activists-call-for-firing-of-apd-leadership-in-wake-of-officer-involved-shooting/.

[18] Tony Plohetski, “Austin Police Officer Christopher Taylor Charged with Murder in Michael Ramos Shooting,” *Austin American-Statesman,* March 10, 2021. https://www.statesman.com/story/news/politics/2021/03/10/michael-ramos-austin-police-department-officer-christopher-taylor-indicted-murder/6940079002/

[19] Kevin Clark, “Austin Police Chief: Force Used against Protesters 'within Policy',” *KXAN Austin,* June 1, 2020, https://www.kxan.com/investigations/austin-police-chief-force-used-against-protesters-within-policy/.

calls", as "Austin has the highest per capita rate of police shootings during mental health calls of the 15 largest US cities."[20]

Resolution 66. On December 5, 2019, the Austin City Council directed the City Manager to initiate a comprehensive audit of APD's training of police cadets and ensure that cadet classes not be resumed until the assessment is completed.[21] Council directed a review of training materials, course content, protocols and procedures; how the department trains on cultural competency; and how the police academy addresses issues of bias, use of force, de-escalation, mental health responses, and protocols for non-English speaking and disabled persons, among other areas. Council further directed that the City Manager track and report on:

- APD training "related to reducing bias, increasing de-escalation, reducing racial disparities in use of force and severity of force, reducing racial disparities in discretionary searches, and improving communication with all individuals regardless of language, ethnicity, sexual orientation, gender identity or disability."
- Recruiting and ways to improve ethnic and gender diversity in cadet classes and whether certain practices and procedures, "including the use of disqualification codes for cadets, have a disparate effect or impact based on race, ethnicity, national origin, sex, religion, sexual orientation, or gender identity."
- Whether the overall balance of training favors efforts to reduce bias-based policing, increase de-escalation techniques, and improving culturally effective communication.
- Police academies elsewhere that have successfully implemented training programs to reduce force incidents and improve communications with diverse communities.
- Ensuring input from "community groups representing those disproportionately affected by policing," including people of color, non-English speaking residents, LGBTQ+ individuals, and persons with disabilities.

Although some of the above areas will be examined in the next phase of Kroll's evaluation of the APD, this report summarizes our findings and recommendations concerning the efficacy and effectiveness of APD's Training Academy in these and other areas.

[20] Robert Sims and Alyssa Goard, "Fatal Use of Force by APD during Mental Health Calls Violates Human Rights, Report Finds," *KXAN Austin*, September 25, 2019, https://www.kxan.com/news/fatal-use-of-force-by-apd-during-mental-health-calls-violates-human-rights-report-finds/.

[21] Audrey McGlinchy, "Austin Orders Sweeping Probe Of Alleged Racism, Bigotry Among Police, Including Social Media Audit," *KUT Radio, Austin's NPR Station*, December 5, 2019, https://www.kut.org/post/austin-orders-sweeping-probe-alleged-racism-bigotry-among-police-including-social-media-audit.

4 BEST PRACTICES FOR POLICE ACADEMIES

Introduction

Of all the areas in policing, training has received the least amount of research attention. In 2015, President Obama's Task Force on 21st Century Policing (Task Force on 21st Century Policing) released a final report that identified six main pillars impacting the law enforcement profession: building trust and legitimacy, policy and oversight, technology and social media, community policing and crime reduction, officer training and education, and officer safety and wellness.[22] The Task Force report included over 150 recommendations and proposed action items for reform. While this work provided a promising roadmap for a path forward, it is important to note that many of the proposed recommendations were *not* evidence-based, in part because rigorous data collection and analysis to assess the utility of these reforms in real-world applications has not been prioritized.[23]

As a result of this lack of evidence, identifying appropriate recommendations for effective police training has been based less on research or empirical evaluations, and more on anecdotal evidence regarding best practices. Identifying these best practices is further challenged by the wide variation in training curricula, techniques, and content taught in police academies. Police training differs significantly across the United States, due in part to the decentralized nature of policing. In particular, police training varies dramatically in content, duration, and delivery for both basic and in-service training.

In general, few forms of police training have been subject to scientific review, but it does appear scholarship in this area is growing. Some forms of police training, including de-escalation training, crisis intervention teams, and procedural justice training have received recent empirical evaluations.[24] [25] [26] [27] These training programs have been correlated with several positive outcomes, such as reductions in use of force incidents, reductions in injuries, and increases in officer knowledge and skills. However, according to a survey conducted by the Police Executive Research Foundation (PERF), on average, officers do not spend a lot of time on these topics.[28] Specifically, academies designate most of their training hours on weapons and

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[22] President's Task Force on 21st Century Policing, "Final Report of the President's Task Force on 21st Century Policing" (Washington, DC: Office of Community Oriented Policing Services, 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[23] See, e.g., Cynthia Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing — Implementation and Research Priorities" (Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University; Alexandria, VA: International Association of Chiefs of Police, 2016), https://cebcp.org/wp-content/evidence-based-policing/IACP-GMU-Evidence-Assessment-Task-Force-FINAL.pdf.

[24] Michael T. Compton et al., "A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs," *Journal of the American Academy of Psychiatry and the Law Online,* 36, no. 1 (2008): pp. 47-55, https://pubmed.ncbi.nlm.nih.gov/18354123/.

[25] Robin Engel et al., "Examining the Impact of Integrating Communications, Assessment, and Tactics (ICAT) De-escalation Training for the Louisville Metro Police Department: Supplemental Findings" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020). https://www.theiacp.org/sites/default/files/Research%20Center/LMPD_ICAT%20Evaluation%20Initial%20Findings%20Report_FINAL%2009212020.pdf.

[26] Li Sian Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey? A Synthetic Control Analysis of Force Outcomes," *Criminology & Public Policy* (2021): pp. 1-35, https://doi.org/10.1111/1745-9133.12536.

[27] Daniel S. Nagin and Cody W. Telep, "Procedural Justice and Legal Compliance," *Annual Review of Law and Social Science*, 13 (2017): pp. 5-28, https://doi.org/10.1111/1745-9133.12499.

[28] Police Executive Research Forum, "Critical Issues in Policing Series: Re-Engineering Training on Police Use of Force" (Washington, DC: Police Executive Research Forum, 2015), https://www.policeforum.org/assets/reengineeringtraining1.pdf.

defensive tactics (more than 120 hours per year), and less on de-escalation, communication skills, or crisis intervention (roughly 26 hours per year). As such, many argue the focus of police training needs to be adjusted.[29]

Others recognize that police training is outdated and needs to include evidence-based, theory-informed curricula and delivery, which will ultimately improve learning and skill retention.[30] [31] While a comprehensive review of the police training literature base has found that there is little evidence around police training modalities and the existing literature is mostly hypothetical or based on other study populations,[32] several studies point towards the utility of repeated content exposure and practice[33] [34] or booster training programs.[35] The Council on Criminal Justice (CCJ) recommends that training content be delivered through a mixture of lecture, real world video examples, scenario-based role playing, and group discussion.[36] Overall, there is little systematic research on police training and scholars have long noted the need for more research on this topic.[37] [38] [39] [40]

After conducting an in-depth examination of the effectiveness of training in the United States, guidance regarding best practices has recently been summarized by the CCJ Task Force on Policing.[41] The CCJ's summary assessment examined the current practice and available research on training duration, content, and delivery, along with certification and national training standards. Through this process, the CCJ identified differences in what they termed a "resiliency-based" approach to training, which teaches officers to "recognize stress and regulate their responses to it", compared to the more typical "stress-oriented" military training approach, which involves "intensive physical demands and psychological pressure."[42] Based on their comprehensive review, they recommend that police training: (1) include more time teaching communication skills, de-escalation tactics, principles of procedural justice, and handling situations that officers are most likely to encounter, (2) adopt a resiliency-based approach rather than stress-oriented

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[29] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment" (Washington, DC: Council on Criminal Justice, Task Force on Policing, 2021), https://councilоncj.foleon.com/policing/assessing-the-evidence/policy-assessments/.

[30] Michael Birzer, "Theory of Andragogy Applied to Police Training," *Policing: An International Journal of Police Strategies & Management*, 26, no. 1 (2003): pp. 29-42, https://doi.org/10.1108/13639510310460288.

[31] Rebecca Mugford, Shevaun Core, and Craig Bennell, "Improving Police Training from a Cognitive Load Perspective," *Policing: An International Journal of Police Strategies & Management*, 32, no. 2 (2013): pp. 312-337, https://doi.org/10.1108/13639511311329723.

[32] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing".

[33] Sean H. Kang, "Spaced Repetition Promotes Efficient and Effective Learning: Policy Implications for Instruction," *Policy Insights from the Behavioral and Brain Sciences,* 3, no. 1 (2016): pp. 12-19, https://doi.org/10.1177/2372732215624708.

[34] Mugford et al., "Improving Police Training from a Cognitive Load Perspective".

[35] Kyle McLean et al., "Randomized Controlled Trial of Social Interaction Police Training," *Criminology and Public Policy*, 13, no. 3 (2020): pp. 805-832, https://doi.org/10.1111/1745-9133.12506.

[36] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment".

[37] Dale R. Buchanan and Patricia A. Perry, "Attitudes of Police Recruits Towards Domestic Disturbances: An Evaluation of Family Crisis Intervention Training," *Journal of Criminal Justice,* 13, no. 6 (1985): pp. 561-572, https://doi.org/10.1016/0047-2352(85)90084-4.

[38] National Research Council, *Fairness and Effectiveness in Policing: The Evidence* (Washington, D.C.: The National Academies Press, 2004).

[39] Wesley Skogan, Maarten Van Craen, and Cari L. Hennessy, "Training Police for Procedural Justice," *Journal of Experimental Criminology,* 11, no. 3 (2015): pp. 319-334, https://doi.org/10.1007/s11292-014-9223-6.

[40] I. D. Winebrenner, *Family Crisis Intervention: The Erie County Project and the Role of the Family Crisis Patrolman* (Erie, PA: Bolte Center Press, 1976).

[41] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment".

[42] *Ibid*, 1.

military training, (3) include periodic recertification beyond firearms training, and (4) develop national standards on training and certification.

In recent years, frequent analyses have also noted the perils of a "warrior" mentality in law enforcement and the need to shift to a more "guardian" approach. In essence, whereas the warrior police officer fights to control and conquer criminals, the guardian serves to protect the community. This metaphor might help explain why police agencies that ostensibly embrace the warrior mentality struggle with excessive uses of force, racial bias, and inappropriate responses to mental health crises; research and common sense dictate that departments ought to model their training principles closer to the guardian image than the warrior one. While this section will reference this dichotomy as it relates to police academy culture and take note of departments that have successfully embraced the guardian mindset, it will focus more specifically on the need to shift towards a resiliency-based approach.

Based primarily on the summary assessment from the CCJ and other trusted academic and editorial sources, the following review summarizes current police academy training best practices consistent with a resiliency-based or guardian-minded approach. The first section explains how paramilitary-style training and recruiting is believed to create a warrior-based culture, the negative consequences of this culture, and steps taken by departments across the country to change it. The second section then highlights some identified best practices of police academy curricula and policy, including an emphasis on de-escalation training, officer intervention, and a commitment to procedural justice. These features are evidenced by studies as well as examples of police forces that have incorporated them.

A Revised Police Academy Culture

The "warrior mentality" is a pervasive feature of modern law enforcement. Emerging fairly recently in the history of the United States, the prevailing mindset to treat crime as an enemy to be conquered and police like soldiers in that battle developed in response to the political 'wars' on drugs and terrorism.[43] This was particularly emboldened after September 11, 2001, when police became increasingly militarized in an effort to combat terrorism.[44]

Characterized by displaying courage in the face of life-threatening situations and fighting to "make it home at all costs," the warrior mentality is often admired in policing for enabling officers to forcefully confront individuals who pose an immediate risk to the public and themselves.[45] But these situations are rare in day-to-day police work; on average, departments devote only four percent of their time responding to violent crime.[46] [47] Instead, most time on the street is spent responding to medical emergencies, mental health crises, and traffic violations, situations that can escalate when officers respond with a warrior mindset, prepared to fight.[48] This is not to say that policing is not a dangerous profession. Compared to all other

[43] Jeff Adachi, "Police Militarization and the War on Citizens," *Human Rights Magazine*, February 1, 2017, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2016-17-vol-42/vol-42-no-1/police-militarization-and-the-war-on-citizens/.

[44] Arthur Rizer and Joseph Hartman, "How the War on Terror Has Militarized the Police," *The Atlantic* (Atlantic Media Company), November 7, 2011, https://www.theatlantic.com/national/archive/2011/11/how-the-war-on-terror-has-militarized-the-police/248047/.

[45] Amaury Murgado, "Developing a Warrior Mindset," *POLICE Magazine*, May 24, 2012, https://www.policemag.com/340761/developing-a-warrior-mindset.

[46] Jeff Asher and Ben Horwitz, "How Do the Police Actually Spend Their Time?," *The New York Times*, June 19, 2020, https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html.

[47] With variation across different municipalities.

[48] Jerry Ratcliffe, *Intelligence-Led Policing* (New York, NY: Routledge, 2016), referenced in Roge Karma, "We Train Police to Be Warriors - and Then Send Them out to Be Social Workers," *Vox*, July 31, 2020, https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training.

occupations, police officers are four times more likely to die from an on-the-job injury.[49] Moreover, officers must be effectively trained to handle acute situations in which the public is put in danger from a violent criminal. But in the greater context of police work, seeing oneself primarily as a "warrior" is a precarious mindset. As noted by Seth Stoughton, a former officer and current professor at the University of South Carolina School of Law, when officers are taught to see citizens as potential threats to their life, they learn to fear them.[50] Thus, interactions between the police and the community often start with suspicion, vigilance, and caution, and positive encounters become infrequent, if not impossible. Furthermore, since officers are taught to physically control their space and react forcefully to noncompliance, they sometimes escalate otherwise peaceful encounters, making situations more dangerous for both sides.

Some experts have noted that military-style boot camps and "stress-oriented" training styles might foster this warrior mentality. The majority of police academy training in the United States is based on a military training approach that reinforces intensive physical demands, psychological pressure, and chain-of-command decision making. In these settings, instructors act like Marine drill sergeants, yelling orders and punishing recruits for minor infractions; recruits, in turn, must respond to orders with calls of 'Yes Sir!' or 'Yes Ma'am!'[51] Based on a 2013 survey of police academies, this stress oriented approach to training is used as the sole approach, or in combination with other styles, in over 80% of training academies; only about one in five (18%) academies reported using "non-stress" models for instruction.[52] While this training style may instill discipline and foster a battle-ready mentality, it may also demonstrate that it is acceptable to belittle those with less power.

Other components of the military model may also be inconsistent with the demands of modern policing. For instance, when officers graduate from the academy and start working on patrol, they must regularly make independent, discretionary choices that require critical thinking skills; military-style academies that emphasize strict adherence to authoritative rules over independent decision making may not adequately prepare officers to make the kinds of discretionary choices required on a day-to-day basis.[53] Moreover, the use of recruiting videos and web content that routinely feature high-action sequences and appeals to strength and violence over service can send the wrong message about the nature of policing in a progressive urban environment.[54] [55] [56]

A distinct but likewise ubiquitous problem with the culture in many academies is the lack of accountability among fellow officers; officers rarely report their peers for breaking rules or acting inappropriately. While this behavior is not enforced explicitly through policy, officers may learn early in the academy that if you

[49] "Fact Sheet | Police Officers | August 2016," *U.S. Bureau of Labor Statistics,* August 2016, https://www.bls.gov/iif/oshwc/cfoi/police-officers-2014.htm.

[50] Seth Stoughton, "Law Enforcement's 'Warrior' Problem," *Harvard Law Review*, April 10, 2015, https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/.

[51] Rosa Brooks, "Stop Training Police Like They're Joining the Military," *The Atlantic* (Atlantic Media Company), August 12, 2020, https://www.theatlantic.com/ideas/archive/2020/06/police-academies-paramilitary/612859/.

[52] Brian A. Reaves, "State and Local Law Enforcement Training Academies 2013" *U.S. Department of Justice* (Office of Justice Programs, Bureau of Justice Statistics, 2016), https://www.bjs.gov/content/pub/pdf/slleta13.pdf.

[53] Sue Rahr and Stephen K. Rice, "From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals," *Harvard Kennedy School* (National Institute of Justice), April 2015, 6, https://www.ojp.gov/pdffiles1/nij/248654.pdf.

[54] "The Newport Beach Police Dept—Are You Qualified," *youtube.com*, November 14, 2008, https://www.youtube.com/watch?v=w_rKA6ROAVk.

[55] City of Palm Beach Gardens, "Palm Beach Gardens Police Department- Recruitment Video," *youtube.com,* May 26, 2020, https://www.youtube.com/watch?app=desktop&v=-Ftkjd19j5k.

[56] Andrew Wolfson, "Louisville Police Recruiting Video Lures 'Action-Movie Heroes,' Not Guardians, Experts Say," *Louisville Courier Journal*, January 23, 2021, https://www.courier-journal.com/story/news/local/2020/07/14/lmpd-recruiting-video-seeks-warriors-not-guardians-experts-warn/5390736002/.

report a peer, you will be ostracized.[57] This is sometimes referred to as "the blue wall of silence," and its pervasiveness in some police agencies' culture has been well documented.[58] [59] Officers bound to the duty to protect their own serve to reinforce the "us versus them" dynamic that exacerbates the warrior concept.

These factors create a problematic culture among police officers in many academies. While curriculum and policy changes in academies are necessary for improving police and community relations, reforming the academy culture based on stress-oriented training is an important first step. As discussed in the final report of the Task Force on 21st Century Policing, "any law enforcement organization can make great rules and policies that emphasize the guardian role, but if policies conflict with the existing culture, they will not be institutionalized and behavior will not change."[60]

Using a different training approach, police academies can establish a guardian-centric culture that focuses on service to the community rather than fighting crime, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, "resiliency-based" training has been shown to have several positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression.[61] Experts contend that this training style—which emphasizes strengthening officers' critical decision-making skills, communication, and emotional intelligence skills—is better associated with the skills and tactics necessary to handle complex situations that officers are likely to face in the field. As noted by the CCJ, "while there is no rigorous evidence that examines the current composition of policing training content in the United States compared to potential alternatives, there is some evidence that training which enhances human interaction skills may improve officer-civilian interactions and reduce use of force."[62]

The seminal model for the resiliency-based approach was pioneered by Sue Rahr, a former police chief and member of the Task Force on 21st Century Policing. Lead by Rahr, the Washington State Criminal Justice Training Commission (WSCJTC), which trains every recruit in Washington State, began fostering an improved training culture. Before 2012, the commission operated in the paramilitary-style, with officers required to stand at attention when addressed by their superiors and berated for failing to complete challenges meant to be impossible. Classroom visual aids also reinforced the military mindset, with handcuffs, nightsticks, and skulls and crossbones proudly displayed.[63]

To establish a more resiliency-based model, Rahr instituted several reforms. For example, rather than have recruits salute staff members, they are now required to initiate eye contact and conversation. In trophy cases and on walls, symbols glorifying the pride and danger of policing were replaced by visual aids representing the higher purpose and duty of the job, like the Constitution and Declaration of Independence. Frequent seminars, discussions, and exercises also encourage open communication and mindfulness. And

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[57] Rich Schapiro, "'If You Snitch, Your Career Is Done': Former Baltimore Cop Says He Was Harassed, Labeled a 'Rat' after Attempt to Root out Police Brutality," *nydailynews.com*, January 14, 2015, https://www.nydailynews.com/news/crime/ex-baltimore-labeled-rat-police-brutality-claim-article-1.2077632.

[58] "Blue Wall of Silence: The Record," *The Marshall Project*, 2014, https://www.themarshallproject.org/records/605-blue-wall-of-silence.

[59] A clear example of this can be seen from a Department of Justice Report criticizing the culture of silence in the Chicago Police Department in 2017.

[60] Task Force on 21st Century Policing, "Final Report," 12.

[61] Rollin McCraty and Mike Atkinson, "Resilience Training Program Reduces Physiological and Psychological Stress in Police Officers," *Global Advances in Health and Medicine,*1, no. 5 (2012): pp. 44-66, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4890098/.

[62] Council on Criminal Justice, "Effectiveness of Police Training. Policy Assessment," 4.

[63] Rahr and Rice, "From Warriors to Guardians".

while physical tests remain rigorous, instructors now encourage recruits to keep pushing, rather than berating or punishing them for failure.[64]

Additionally, while the paramilitary model tended to teach recruits through behavioral methods (punishing or rewarding success to reinforce proper conduct), the Washington State training commission now emphasizes the importance of adult learning methods, which modern psychological evidence suggests is more effective at teaching recruits.[65] In particular, the commission uses job-related case studies and student-led discussions to encourage the development of critical thinking skills and increased emotional intelligence.[66]

These new training methods, along with changes to academy curricula emphasizing de-escalation over tactical force, have transformed the commission into a model for resiliency-based training. Other organizations have likewise developed models and methods for improving academy culture. The Innovative Policing Program (IPP), designed by faculty at Georgetown Law School, aims to rethink the role of police in enhancing public safety. Through training seminars, lectures, and workshops, the program has worked with many large departments to educate and work with officers on issues relating to racial injustice. Along with the Metropolitan Police Department (MPD) in Washington D.C., IPP has run programs to teach recruits to discuss the role of police in perpetuating racial injustice and has brought in many police and criminal justice experts to speak about policing in today's world.[67] The MPD has also inserted civilians into some senior-academy positions, a move signaling a break from a military-style culture.[68] Several other organizations have also been on the forefront of addressing peer accountability among officers.

In combination with other reforms to the stress-oriented training model, these new approaches are recognized as an important step towards reforming police culture to become more consistent with respectful and constitutional policing.

Policy and Curriculum Best Practices

Rebuilding police culture in the image of a community-oriented, service provider is a significant first step in reforming academies, but concrete policy and curriculum changes are necessary as well. Specifically, academies must design their training programs to address and resolve concerns regarding police-community relations and racial bias. The following are major areas of focus in police reform efforts that are consistent with this recommended change in academy culture. While this list focuses on and describes several of the major topics of academy reform, it does not include all potential areas of best practices.

Procedural Justice

Distrust between the police and communities of color is a significant barrier to effective policing. Over the last 30 years, public trust and confidence in the police has decreased despite consistent reductions in

[64] Josh Sanburn, "The Woman Who Is Restoring Order to Law," *Time* , October 13, 2016, https://time.com/collection-post/4527347/2016-election-policing/.

[65] Michael Birzer, "Theory of Andragogy Applied to Police Training".

[66] Daniel M. Blumberg et al., "New Directions in Police Academy Training: A Call to Action," *International Journal of Environmental Research and Public Health* 16, no. 24 (December 6, 2019): 4941, p. 3, https://doi.org/10.3390/ijerph16244941.

[67] "Innovative Policing Program," *Innovative Policing Program*, https://www.law.georgetown.edu/innovative-policing-program/.

[68] Brooks, "Stop Training Police Like They're Joining the Military".

violent crime rates.[69] At the time of this writing, trust and confidence in policing has reached a modern-day low, where only 48% of Americans indicated they felt confidence in the police.[70]

When communities lack trust in the police and believe that officers treat them unfairly, they are less likely to work collaboratively with law enforcement and less likely to defer to law and authority.[71] Extensive research has shown that trust and confidence in law enforcement has a significant impact on public safety.[72] For communities to trust the police, they need to see them as legitimate. The principle of procedural justice focuses on the public's perception of the legitimacy of law enforcement.

Scholars and police experts agree that to gain legitimacy, the police need to follow four main principles: (1) allow people to explain themselves or state their case before judgment, (2) react to real evidence and enforce the law consistently, without bias, (3) treat citizens with dignity and respect, and (4) present themselves with physical cues that show compassion and trustworthiness rather than arrogance and disdain.[73] Studies have consistently shown that responding to each of these concerns contributes to an increase in the perceived legitimacy of the police in the community.[74]

Many departments have acknowledged the importance of procedural justice in modern policing and have begun to develop training programs to address it. These programs work to educate officers on the importance of procedural justice and provide them with the tools to address the four tenets of concern. Most notable in these efforts is the curriculum in procedural justice developed and implemented in 2012 within the Chicago Police Department (CPD)—with the assistance of academics Tom Tyler and Tracey Meares—that was attended by all CPD officers.[75] The initial "Legitimacy and Procedural Justice Training" course aimed to provide a clear understanding of the concept of procedural justice and the application of its principles to police work. After running the first session, the department designed a second phase of the program to reinforce the core concepts through scenario-based training and videos illustrating community-member perspectives.

An empirical evaluation of the CPD training program demonstrated some success. For example, a vast majority of officers (95%) reported positive attitudes after the training about resolving the concerns of the community, with these attitudes for the most part remaining in the long term.[76] Moreover, a 2020 study measuring the effects of the program on police use of force and complaints against officers found that the

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[69]Craig Fischer, ed., "Legitimacy and Procedural Justice: A New Element of Police Leadership" (Washington, DC: Police Executive Research Forum, March 2014), 1-2, https://www.policeforum.org/assets/docs/Free_Online_Documents/Leadership/legitimacy%20and%20procedural%20justice%20-%20a%20new%20element%20of%20police%20leadership.pdf.

[70] Megan Brenan, "Amid Pandemic, Confidence in Key U.S. Institutions Surges," *Gallup*, August, 2020, https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx.

[71] Fischer, "Legitimacy and Procedural Justice," 2.

[72] "Procedural Justice," *Truth & Justice*, https://trustandjustice.org/resources/intervention/procedural-justice. (see list of research links at bottom of webpage).

[73] Fischer, "Legitimacy and Procedural Justice," 9-10.

[74] Steven L. Blader and Tom R. Tyler, "A Four-Component Model of Procedural Justice: Defining the Meaning of a 'Fair' Process," *Personality and Social Psychology Bulletin* 29, no. 6 (June 1, 2003): pp. 747-758, https://doi.org/10.1177/0146167203029006007.

[75] Daniela Gilbert, Stewart Wakeling, and Vaughn Crandall, "Procedural Justice and Police Legitimacy: Using Training as a Foundation for Strengthening Community-Police Relationships," (Oakland, CA: California Partnership for Safe Communities, February 2015), https://bja.ojp.gov/sites/g/files/xyckuh186/files/bwc/pdfs/procedural-justice-and-police-legitimacy-paper-cpsc-feb-2015.pdf.

[76] *Ibid*.

timing of the training corresponded with a 10% reduction in complaints against officers and a 6.4% reduction in police use of force against civilians.[77]

Chicago's procedural justice training program has been adopted by many police agencies across the United States. Shortly after the program was introduced, representatives from the CPD ran workshops for several municipalities in California, including Oakland, Stockton, and Salinas, each of whom then designed their own programs to address the unique circumstances of their cities. For instance, with a particularly tense relationship between the Oakland Police Department and the city's community, Oakland included community leaders in planning their revised training program.[78] More departments are also continuing to build upon this program, including Birmingham, Fort Worth, Minneapolis, and Pittsburgh, for instance, while others like Seattle, have developed their own. Many of these programs have been equally successful; in Seattle, procedural justice training correlated to reductions in use of force incidents ranging from 16 to 50 percent.[79]

Experts have also called for departments to address procedural justice concerns internally—that is, to establish care for the four tenets of concern in procedural justice among department members themselves. For example, research has shown that when officers feel respected by their supervisors, they are more likely to support and comply with decisions.[80] Moreover, treating recruits in the academy with respect and dignity allows them to feel happier and have a greater sense of self-worth, which in turn provides them with a deeper connection to an agency's mission and values.[81]

Rahr's training commission espouses both external and internal procedural justice through a philosophy called LEED—Listen and Explain with Equity and Dignity. While not taught through a particular course, the LEED model teaches officers to always listen to people when they explain their story, explain what they are doing, use and express consideration for fairness when acting, and treat people with dignity.[82]

Community Policing Programs

A commitment to procedural justice goes hand-in-hand with community-oriented policing, or an emphasis on working cooperatively with people in neighborhoods to solve problems of public concern.[83] In doing so, police and the community garner a shared responsibility for maintaining order and public safety; community residents become more active in crime prevention, while police departments become more responsive to community concerns. Unlike traditional policing, which responds to calls for service once a crime is committed, community-oriented policing is focused on identifying underlying conditions for crime and

[77] George Wood, Tom R. Tyler, and Andrew V. Papachristos, "Procedural Justice Training Reduces Police Use of Force and Complaints against Officers," *Proceedings of the National Academy of Sciences* 117, no. 18, (2020): 9815-9821, https://doi.org/10.1073/pnas.1920671117.

[78] Gilbert et al., "Procedural Justice and Police Legitimacy," 10.

[79] Emily Owens et al., "Can You Build a Better Cop?," *Criminology & Public Policy* 17, no. 1 (2018): 41-87, https://doi.org/10.1111/1745-9133.12337.

[80] Nicole E. Haas, Maarten Van Craen, Wesley G. Skogan, and Diego M. Fleitas. "Explaining Officer Compliance: The Importance of Procedural Justice and Trust inside a Police Organization." *Criminology & Criminal Justice* 15, no. 4 (January 20, 2015): 442–63. https://doi.org/10.1177/1748895814566288.

[81] Charlene Moe and Melissa Bradley, "Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors," *The Beat*, April 2015, https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.

[82] Sue Rahr, John Diaz, and Joe Hawe, "The Four Pillars of Justice Based Policing" (Washington State Criminal Justice Training Commission, n.d.), https://www.rampagelaw.com/wp-content/uploads/sites/1500041/2020/02/05-Justice-Based-Policing-LEED.pdf.

[83] "Community Policing," *National Police Foundation*, https://www.policefoundation.org/projects-old/community-policing/.

collaborating with the public to address these conditions proactively.[84] This is often achieved through frequent meetings with community members to provide advice and encourage neighborhood watch groups, decentralization of authority and increased officer discretion, and cooperation with other public agencies and stakeholders.[85]

According to the Task Force on 21st Century Policing, community policing programs have been shown to reduce crime rates because they facilitate trust between the community and the police.[86] Moreover, since community policing programs often give officers greater discretion to respond to community concerns, evidence suggests these programs improve police job satisfaction.[87] Community policing has been cited as a major force behind decreasing crime rates, particularly in Boston, where every major category of crime has decreased in the last couple of decades.[88]

While an effective community policing program goes beyond academy training, proposals for reform that focus on the academy are promising. In the Task Force on 21st Century Policing, several recommendations for officer training and education focus on building community relations.[89] For example, the task force recommends that law enforcement agencies engage and involve community members in the training process, and that agencies ensure basic training includes lessons on improving social interactions. In addition, academics and police experts like Seth Stoughton have proposed initiatives that require recruits to initiate non-enforcement contacts with community members.[90] By engaging in meaningful conversations without being able to use enforcement tactics, such a program would allow would-be officers to connect with community members less formally, building ties and allowing for easier cooperation with the community.

De-escalation Training

Widely shared incidents of excessive use of force by police officers, particularly against minorities, have led to increased public scrutiny into use-of-force training policies in police academies. In addressing an officer's decision to use force, most academies teach a decision model described as the "use-of-force continuum" which advises officers to always react with more force and more powerful weapons than the individuals they confront.[91] However, as Sue Rahr explained, while some situations require officers to quickly take control with aggressive force, "in most situations, it's better if officers know how to de-escalate, calm things down, slow down the action."[92] As such, experts like Rahr argue that police academies ought to teach their cadets skills necessary for de-escalation.

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[84] William M. Rohe, Richard E. Adams, and Thomas A. Arcury, "Community Oriented Policing: What It Is - Why It Works - How to Get Started" (Chapel Hill, NC: The University of North Carolina Center for Urban and Regional Studies; The North Carolina Department of Crime Control and Public Safety, January 1997), https://www.ojp.gov/pdffiles1/Digitization/169113NCJRS.pdf.

[85] "Examples of Effective Community Engagement," *Ohio Collaborative Community-Police Advisory Board*, https://ericmembers.org/wp-content/uploads/2018/05/Examples-Community-Police-Engagement_Ohio.pdf

[86] Task Force on 21st Century Policing, "Final Report," 3.

[87] *Ibid*, 41.

[88] Thejasa Jayachandran, "Community Policing: A Success Story?: Rise of Community Policing," *Pioneer Institute*, August, 10, 2016, https://pioneerinstitute.org/better_government/community-policing-success-story/.

[89] Task Force on 21st Century Policing, "Final Report".

[90] Seth Stoughton, "Law Enforcement's 'Warrior' Problem".

[91] Isidoro Rodriguez, TCR Staff, and Andrea Cipriano, "Police in America: Warriors or Peacemakers?," *The Crime Report,* June 18, 2018, https://thecrimereport.org/2018/06/18/police-in-america-warriors-or-peacemakers/.

[92] Kimberly Kindy, "These Police Recruits Are Being Trained to Be Guardians, Not Warriors," *The Washington Post*, December 10, 2015, https://www.washingtonpost.com/sf/investigative/2015/12/10/new-style-of-police-training-aims-to-produce-guardians-not-warriors/.

Despite support for de-escalation training from Rahr and other experts, though, we do not know precisely the impact this type of training has on police-citizen interactions.[93] [94] Even the term "de-escalation" lacks an evidence-based definition in the policing field.[95] [96] Broadly speaking, nursing and psychiatry fields refer to de-escalation as a process used to prevent, reduce, or manage aggressive behavior during an interaction between two or more persons.[97] The *National Consensus Policy and Discussion Paper on Use of Force,* released in October 2017, was one of the first documents to define de-escalation as it relates to policing. They proposed the following definition:

> *Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.*[98]

Rather than a description of the tactics or process, others have recommended a more succinct definition. For example, based on feedback gathered during focus groups with police officers, Todak and White define de-escalation as "bringing a situation or citizen in crisis back to a calm state, using the least amount of force possible."[99]

Proponents of de-escalation training within law enforcement agencies argue that this type of training provides officers with enhanced skills to resolve conflicts in highly confrontational situations without the use of force.[100] In turn, an officer's ability to defuse these encounters enhances both officer and civilian safety in police-citizen interactions. Critics of de-escalation training, however, suggest these tactics contradict traditional policing operational responses, increasing officers' risk for injury by encouraging slow responses to potentially volatile situations.[101] [102] Unfortunately, available research on the impacts of de-escalation training provides limited insight on arguments pertaining to the efficacy of this training. Like most training programs implemented within law enforcement, de-escalation training has not been the subject of

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[93] Robin S. Engel, Hannah D. McManus, and Tamara D. Herold, "Does De-escalation Training work? A Systematic Review and Call for Evidence in Police Use of Force Reform," *Criminology & Public Policy*, 19, no. 3 (2020): pp. 721-759, https://doi.org/10.1111/1745-9133.12467.

[94] Robin Engel, Hannah D. McManus, and Gabrielle T. Isaza, "Moving Beyond "Best Practice": Experiences in Police Reform and a Call for Evidence to Reduce Officer-involved Shootings," *ANNALS of the American Academy,* 687, no.1 (2020): pp. 147-165, https://doi.org/10.1177/0002716219889328.

[95] Engel et al., "Does de-escalation training work?".

[96] Natalie Todak and Lois James, "A systematic social observation study of police de-escalation tactics," *Police Quarterly,* 21, no. 4 (2018): pp. 509-543, https://doi.org/10.1177/1098611118784007.

[97] Engel et al., "Does de-escalation training work?".

[98] International Association of Chiefs of Police, "National Consensus Discussion Paper on Use of Force and Consensus Policy," (Alexandria, VA: Contributing Organizations, 2017), https://www.theiacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force-and-consensus-policy.

[99] Natalie Todak and Michael D. White, "Expert officer perceptions of de-escalation in policing," *Policing: An International Journal.* 42, no. 5 (2019): 842, https://doi.org/10.1108/PIJPSM-12-2018-0185.

[100] Janet R. Olivia, Rhiannon Morgan, and Michael T. Compton, "A Practical Overview of De-Escalation Skills in Law Enforcement: Helping Individuals in Crisis While Reducing Police Liability and Injury," *Journal of Police Negotiations*, 10, no. 1: 15-29 (2010), https://doi.org/10.1080/15332581003785421.

[101] David Blake, "Does de-escalation endanger police officers or save lives?" *PoliceOne*, 2017, https://www.policeone.com/Officer-Safety/articles/455355006-Does-de-escalation-endanger-police-officers-or-save-lives/.

[102] Tom Jackman, "De-escalation training to reduce police shootings facing mixed reviews at launch," *The Washington Post*, 2016, https://www.washingtonpost.com/local/public-safety/de-escalation-training-to-reduce-police-shootings-facing-mixed-reviews-at-launch/2016/10/14/d6d96c74-9159-11e6-9c85-ac42097b8cc0_story.html.

substantial empirical evaluation.[103] [104] As a result, little is known regarding the development, delivery, and impact of this type of training.

The most comprehensive study to date, however, shows promising results for a de-escalation training program called Integrating Communications Assessment and Tactics (ICAT). Developed as a national model for de-escalation training by PERF and hundreds of police professionals across the United States, the ICAT program aims to "provide first responding police officers with the tools, skills, and options they need to successfully and safely defuse a range of critical incidents."[105] Specially designed to account for situations involving unarmed individuals experiencing mental health or other crises (situations that can lead to fatal encounters if the police respond aggressively),[106] ICAT encourages officers to create distance, use physical cover as protection, buy time speaking rather than commanding, and in general slow things down.[107]

Implemented with the Louisville Metro Police Department (LMPD), researchers found that ICAT demonstrated a statistically significant 28% reduction in officer use of force, 26% reduction in citizen injuries, and 38% reduction in officer injuries that corresponded directly with the training. This study, conducted by Robin Engel and her colleagues at the University of Cincinnati, represents the first large-scale, rigorous empirical evaluation of police de-escalation training that has demonstrated a significant reduction in police use of force. Further, the ICAT training specifically is the only de-escalation training curricula with clear and strong evidence regarding its impact on police behavior.[108]

Already adopted by almost 100 departments in the country, including Louisville, Camden, and Baltimore, the program has proven successful. As described above, evaluation of the program's implementation in Louisville found that ICAT led to significant reductions in use of force incidents, officer injury, and citizen injury.[109] In Camden, the ICAT program, in combination with a variety of other new policies and training, led to excessive force complaints dropping from 65 in 2014 to 12 in 2017, and overall crime rates dropping 23 percent since 2013.[110] A second study of ICAT in Camden demonstrated a 40% reduction in serious force incidents for the police department, providing further optimism regarding de-escalation training and policies.[111]

Other anecdotal accounts have reported reductions in officer use of force after implementation of enhanced de-escalation training. In San Francisco, for instance, a new training program corresponded with a 24 percent decrease the following year.[112] In Newark, no officer fired a single shot while on duty in 2020 to

[103] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force on 21st Century Policing".

[104] National Research Council, "Fairness and Effectiveness in Policing".

[105] "ICAT: Integrating Communications, Assessment, and Tactics," *Police Executive Research Forum*, https://www.policeforum.org/icat.

[106] Heather Carroll, "Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters," *Treatment Advocacy Center*, December 2015, https://www.treatmentadvocacycenter.org/overlooked-in-the-undercounted.

[107] Rodriguez et al., "Police in America".

[108] Engel et al., "Examining the Impact of ICAT".

[109] *Ibid.*

[110] Rodriguez et al., "Police in America".

[111] Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey?".

[112] Dan Morse and Tom Jackman, "Police De-Escalation Training Gaining Renewed Clout as Law Enforcement Seeks to Reduce Killings," *The Washington Post*, October 27, 2020, https://www.washingtonpost.com/local/deescalation-training-police/2020/10/27/3a345830-14a8-11eb-ad6f-36c93e6e94fb_story.html.

which the department credits their de-escalation program.[113] While more studies should be conducted to determine the precise causal effects of these training programs, these results provide initial promising evidence that an emphasis on de-escalation is safer for both the police and the community.

Crisis-Intervention Team (CIT) Training

Public attention and acceptance of mental illness have grown in recent years.[114] Of particular concern for activists is the relationship between police and individuals with mental illness. Since 2015, almost a quarter of fatal shootings by police officers involve persons with mental illness.[115] Responding to growing concerns over people with mental illness traumatized and even dying in police custody, in 1988, the National Alliance on Mental Illness (NAMI) provided funding for a community task force in Memphis called the Crisis Intervention Team (CIT) to oversee a training program for Memphis Police Department Officers.[116] The training was designed to keep people with mental illness safe during a mental health crisis and teach officers to connect those in crisis with proper treatment services, rather than conducting an arrest, when possible. Today, there are over 3,000 CIT programs across the world.[117] These programs are community-based and rely on partnerships between police organizations, mental health advocates, and people living with mental health issues.

Once a department implements a CIT program, officers who volunteer and pass screening can receive 40 hours of classroom training to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis. Once trained, these officers serve as specialized responders to mental health crisis calls. The goal of the CIT model is to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges.

The Memphis CIT model is one of several training programs designed to facilitate better police responses to behavioral and mental health crises.[118] For example, the co-responder team program pairs trained police officers with mental health professionals to respond to situations involving an individual experiencing a behavioral health crisis.[119] Law Enforcement Assisted Diversion (LEAD) is a pre-booking diversion model that serves to divert individuals charged with minor offenses to community-based mental health or addiction services.[120] Case management team models partner police and behavioral health professionals in the identification, engagement, and case management of individuals with serious mental illness or disability.[121]

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[113] News 12 Staff, "Newark Police: No Officer Fired a Single Shot in 2020, Thanks to De-Escalation Program," *News 12 - The Bronx*, December 30, 2020, https://bronx.news12.com/newark-police-no-officer-fired-a-single-shot-in-2020-thanks-to-de-escalation-program.

[114] Sophie Bethune, "Survey: Americans Becoming More Open About Mental Health," *American Psychological Association*, May 1, 2019, *https://www.apa.org/news/press/releases/2019/05/mental-health-survey*.

[115] *Julie Tate et al., "Fatal Force," The Washington Post, March 28, 2021, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?itid=lk_inline_manual_3*.

[116] Laura Usher et al., "Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises" (Memphis, TN: CIT International, 2019), https://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20Guide%20Interactive%20Web%20Version%20Final.pdf.

[117] *Ibid,* 2.

[118] https://www.theiacp.org/projects/academic-training-to-inform-police-responses

[119] Hannah McManus et al., "Assessing the Impact of Co-Responder Team Programs: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[120] Hannah McManus et al., "Assessing the Impact of Law Enforcement Assisted Diversion (LEAD): A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[121] Hannah McManus et al., "Law Enforcement-Based Case Management Services: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

And mobile crisis team models (MCTs) are a mental-health based response in which an interdisciplinary team of mental health professionals rapidly respond to behavioral health crises.[122] While CIT has arguably been the most popular behavioral crisis response model (and is currently employed by APD), each one described provides its own unique benefits and challenges, and should all be considered as viable options for police departments.

Since the inception of CIT, there have been several evidence-based evaluations of the training's effectiveness. While the literature shows some mixed results particularly concerning the precise effects of training on favorable community outcomes like reduced incarceration, there is encouraging evidence of positive effects of CIT training on officer behavior, attitudes, and knowledge of relevant issues.[123] For example, CIT training improves officer knowledge surrounding behavioral health-related challenges and increases officer confidence in their ability to successfully intervene in a crisis incident.[124] [125] [126] [127] Moreover, research has shown that for CIT-trained officers, conducting a referral or transport was more likely and conducting an arrest less likely than for officers without training.[128]

While CIT training has proved effective in several areas of concern, it is, by itself, an insufficient solution to the broader problem of police responses to mental health calls. According to the executive director of CIT International, Ron Bruno, some departments see the 40-hour CIT training as merely a box to check off, and they do not take the appropriate steps to integrate the program into the wider mental health care system.[129] Ideally, Bruno argues, efforts need to be focused on increasing broader community resources for individuals with mental illness to allow responses to crises that do not involve law enforcement; merely training police officers does not directly address this issue. Departments should continue to build relationships and cooperate with local mental health services as well as supplement CIT training with additional programs to reduce stigma.[130] While CIT training provides officers with more tools to do their jobs safely and effectively and can improve their knowledge of mental illness and community resources, additional programs may be warranted as well.

Peer Intervention Training

The science on why good people fail to act when they ethically should act has been the subject of scientific inquiry for decades, originating from discussions on inaction during the holocaust.[131] It has been applied in

[122] Hannah McManus et al., "Assessing the Impact of Mobile Crisis Teams: A Review of Research" (Cincinnati, OH: IACP/UC Center for Police Research and Policy, 2020).

[123] Amy C. Watson, Michael T. Compton, and Jeffery N. Draine, "The Crisis Intervention Team (CIT) Model: An Evidence-based Policing Practice?" *Behavioral Sciences & the Law,* 35, no. 5-6 (2017): pp. 431-441, https://doi.org/10.1002/bsl.2304.

[124] *Ibid.*

[125] Randy Borum et al., "Police Perspectives on Responding to Mentally Ill People in Crisis: Perceptions of Program Effectiveness," *Behavioral Sciences & the Law*, 16, no. 4 (1988): pp.393-405, https://doi.org/10.1002/(SICI)1099-0798(199823)16:4<393::AID-BSL317>3.0.CO;2-4.

[126] Michael T. Compton et al., "Crisis Intervention Team Training: Changes in Knowledge, Attitudes, and Stigma Related to Schizophrenia," *Psychiatric Services*, 57, no. 8 (2006): pp. 1199-1202, https://doi.org/10.1176/ps.2006.57.8.1199.

[127] Michael T. Compton et al., "A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs".

[128] Michael T. Compton et al., "The Police-Based Crisis Intervention Team (CIT) Model: II. Effects on Level of Force and Resolution, Referral, and Arrest," *Psychiatric Services*, 65, no. 4 (2014): pp. 523-529, https://doi.org/10.1176/appi.ps.201300108.

[129] Eric Westervelt, "Mental Health and Police Violence: How Crisis Intervention Teams are Failing," *National Public Radio*, September 18, 2020, https://www.npr.org/2020/09/18/913229469/mental-health-and-police-violence-how-crisis-intervention-teams-are-failing.

[130] Cassidy B. Haigh, Anne L. Kringen, and Jonathan A. Kringen, "Mental Illness Stigma: Limitations of Crisis Intervention Team Training," *Criminal Justice Policy Review,* 31, no. 1 (2018): pp. 42-57, https://doi.org/10.1177/0887403418804871.

[131] Ervin Staub, *The Roots of Goodness and Resistance to Evil: Inclusive Caring, Moral Courage, Altruism Born of Suffering, Active Bystandership, and Heroism* (Oxford, England: Oxford University Press, 2015).

other areas such as drunk driving,[132] airlines,[133] medical sciences,[134] prevention of sexual assault,[135] and prevention of genocide.[136] Clearly, the principles of bystandership and peer intervention are not new, but their application to the policing practice has been limited.[137] Given the scarcity of effective peer intervention into officer misconduct, many have called for programs specifically designed for this purpose.

One of the first peer intervention training programs, *Ethical Policing Is Courageous* (EPIC), was designed to prevent and mitigate police officer mistakes and misconduct. First developed and implemented by the New Orleans Police Department (NOPD) pursuant to a federal consent decree in 2016, EPIC is built upon the social science research regarding "bystandership." A bystander is any witness who is in a position to understand what is occurring and can take action; a *passive* bystander is one who fails to intervene when the circumstances warrant action and an *active* bystander is one who does.[138] EPIC aims to increase active bystandership to promote peer intervention by officers who will intervene in another's action to prevent or reduce misconduct or mistakes, particularly in use-of-force situations.

The NOPD developed this department-wide program due to the explicitly stated requirement of developing a use-of-force training that emphasized ethical decision making and peer intervention from their Consent Decree with the US Department of Justice.[139] EPIC teaches officers how to intervene safely and effectively with learnable skills. There are several elements of EPIC training that are based on research. For example, EPIC emphasizes the power of active bystanders[140] as well as the inhibitors of action,[141] based on research from social psychology. Scholars note that for a program like EPIC to succeed in a police department, a culture change is required through the involvement and support of superior officers.[142]

EPIC has not yet been subject to formal evaluation, but the NOPD reported preliminary program success through significant reductions in citizen complaints[143] and several officer anecdotal accounts of program

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[132] Nancy Lee and Philip Kotler, *Social Marketing Changing Behaviors for Good* (Los Angeles, CA: Sage Publications, 2008).

[133] Robert O. Besco, "To Intervene or not to Intervene? The Co-pilot's Catch 22," *Proceedings of the Human Factors and Ergonomics Society Annual* Meeting, 39, no. 1 (1995): pp. 20-24, https://doi.org/10.1177/154193129503900106.

[134] Stephanie Shapiro, "A Renewed Call to 'do no harm'," *John Hopkins Medicine DOME*, 62, no. 8 (2011): 6, http://www.hopkinsmedicine.org/news/publications/dome/issues.

[135] Shawn Burn, "A Situational Model of Sexual Assault Prevention Through Bystander Intervention," *Sex Roles*, 60, no. 11 (2009): pp. 779-792, https://doi.org/10.1007/s11199-008-9581-5.

[136] Ervin Staub et al., "Healing, Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killing: An Intervention and its Experimental Evaluation in Rwanda. *Journal of Social and Clinical Psychology*, 24, no. 3 (2005): pp. 297–334, https://doi.org/10.1521/jscp.24.3.297.65617.

[137] Jonathan Aronie and Christy E. Lopez, "Keeping Each Other Safe: An Assessment of the Use of Peer Intervention Programs to Prevent Police Officer Mistakes and Misconduct, Using New Orleans' EPIC Program as a Potential National Model. *Police Quarterly*, 20, no. 3 (2017): 295-321, https://doi.org/10.1177/1098611117710443.

[138] Ervin Staub, *Training active bystanders: A curriculum for school and community* (Orange MA: Quabbin Mediation, Inc., 2007), http://people.umass.edu/estaub/TAB_curricuulum.pdf.

[139] "Consent Decree Regarding the New Orleans Police Department," *Nola.gov*, 2012, https://www.nola.gov/nopd/nopd-consent-decree/.

[140] Ervin Staub, "Helping a Distressed Person: Social, Personality, and Stimulus Determinants," *Advances in experimental social psychology*, 7 (1974): pp. 293–342, (New York, NY: Academic Press), https://doi.org/10.1016/S0065-2601(08)60040-4.

[141] Bibb Latane and John Darley, *The Unresponsive Bystander: Why Doesn't He Help?* (New York, NY: Appleton-Crofts, 1970).

[142] Ervin Staub, "Witnesses/bystanders: The tragic fruits of passivity, the power of bystanders, and promoting active bystandership in children, adults, and groups," *Journal of Social Issues,* 75, no. 4 (2019):pp. 1262-1293, https://doi.org/10.1111/josi.12351.

[143] Tom Jackman, "New Orleans police pioneer new way to stop misconduct, remove 'blue wall of silence'," *The Washington Post*, January 24, 2019, https://www.washingtonpost.com/crime-law/2019/01/24/new-orleans-police-pioneer-new-way-stop-misconduct-remove-blue-wall-silence/. ("Citizen complaints have dropped significantly, from 850 in 2016 to 734 in both 2017 and 2018, they said.")

success in the field.[144] Several agencies have taken steps to adopt a similar program, and command staff from nearly 100 police departments (including Austin Police Department) have traveled to New Orleans to learn more about EPIC.

Building on EPIC, the NOPD and the Innovative Policing Department developed another training resource called Project ABLE (Active Bystandership for Law Enforcement) that "prepare officers to successfully intervene to prevent harm and to create a law enforcement culture that supports peer intervention."[145] Project ABLE offers training, technical assistance, and research available at no cost for all departments in the nation to teach the importance of and allow for the facilitation of officer intervention. Several large departments, including Baltimore (pursuant to a federal consent decree), Philadelphia, Boston, and the WSCJTC are already participating.[146] The ABLE training is now being offered in over 100 police agencies across the country and will become part of the state-mandated training for all police agencies in New Jersey.

It is important to note that, while these programs have shown promise and are anecdotally effective, they have not been empirically examined. While they are based on strong conceptual frameworks, it is unknown if they achieve their intended effects of: (1) changing police culture, and (2) reducing excessive use of force or other problematic behaviors.

Implicit Bias Training

Implicit bias refers to an unconscious prejudice that people may develop due to differential life experiences.[147] In contrast to explicit bias, which is akin to traditional "racism," all humans are subject to some form of unconscious bias that may influence perceptions and behaviors, resulting in discriminatory decision-making.[148] The "automatic association people make between groups of people and stereotypes about those groups," is a well-studied psychological phenomenon.[149] [150] Long noted as a barrier to fair policing, implicit bias provides one potential explanation for the well-documented racial and ethnic disparities that exist across a range of policing outcomes, including traffic and pedestrian stops, arrests, and use of force across the country.[151]

Due to the high rates of minority citizen contact with police, the impact of implicit bias in policing could be especially profound. Indeed, the existence of implicit bias in officers specifically has been demonstrated in research.[152] The Task Force on 21st Century Policing specifically acknowledged implicit bias and its role in producing disparities in outcomes, calling for police training to reduce the impact of such biases. Based

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[144] http://epic.nola.gov/home/

[145] "Active Bystandership for Law Enforcement (ABLE)," *Active Bystandership for Law Enforcement (ABLE),* https://www.law.georgetown.edu/innovative-policing-program/active-bystandership-for-law-enforcement/.

[146] "Police Departments Across Country Embrace Active Bystandership to Prevent Harm," *Business Wire*, September 29, 2020, https://www.businesswire.com/news/home/20200929005159/en/Police-Departments-Across-Country-Embrace-Active-Bystandership-to-Prevent-Harm.

[147] Patricia Devine, "Stereotypes and Prejudice: Their Automatic and Controlled Components," *Journal of Personality and Social Psychology*, 82, no. 1 (1989): 62, https://doi.org/10.1037//0022-3514.56.1.5.

[148] John F. Dovidio, Kerry Kawakami, and Samuel L. Gaertner, "Implicit and Explicit Prejudice and Interracial Interaction," *Journal of Personality and Social Psychology*, 82, no. 1 (2002): pp. 62-68, https://doi.org/10.1037/0022-3514.82.1.62.

[149] "Implicit Bias," *Truth & Justice*, https://trustandjustice.org/resources/intervention/implicit-bias.

[150] Kirsten Weir, "Policing in Black & White," *American Psychological Association*, December 2016, https://www.apa.org/monitor/2016/12/cover-policing.

[151] Lorie A. Fridell, *Producing Bias-Free Policing: A Science-based Approach* (New York, NY: Springer, 2017).

[152] Keith B. Payne, "Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon," *Journal of Personality and Social Psychology*, 81, no. 2 (2001): 181, https://doi.org/10.1037/0022-3514.81.2.181.

upon a large body of psychological research demonstrating that biases can be managed,[153] [154] interventions typically begin by educating individuals regarding the existence of implicit bias and, subsequently, teaching various skills to reduce and manage these biases.[155]

Despite the accumulating evidence from other disciplines demonstrating a mixed picture regarding the impact of implicit bias training on changes in behavior,[156] [157] there remains a critical need to examine implicit bias training for police. One literature review conducted in 2018 found no experimental evaluations of implicit bias training for police officers.[158]

Since this review, only one study—involving the New York City Police Department (NYPD)—has been conducted that specifically examines the impact of an implicit bias training program (Fair and Impartial Policing) on police attitudes and behavior. Using a randomized control trial design, these researchers found increases in officers' reported knowledge about implicit bias, and modest changes in officers' attitudes that correlated with training delivery.[159] For example, 70 percent of participants gained a better understanding of implicit bias, while more than two-thirds learned new strategies that they expected to apply to their work.[160] Moreover, new psychological research has shown promising avenues to reduce implicit bias, including the facilitation of intergroup contact and displaying counter-stereotypic exemplars.[161] However, the NYPD study demonstrated no detectable changes in reported racial and ethnic disparities in stops, frisks, searches, use of force, arrests, summons, or citizen complaints after the training was implemented.

Based on the lack of research on the effectiveness of implicit bias training, the CCJ concluded: (1) additional research is needed to determine whether implicit bias training programs that differ in content and dosage yield better results, and (2) lowering the frequency of high-discretion police stops may be more likely to reduce biased policing than offering implicit bias training.[162] Of note, however, is that the CCJ did not consider the potential (unknown) positive impact that implicit bias training may have on changing the culture of policing. Increasing trainees' general knowledge and understanding regarding implicit bias should remain an important goal of police academies, especially to support the transformation from a stress-oriented to resiliency-based approach, and its corresponding impact on academy culture.

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[153] Margo J. Monteith, Steven A. Arthur, and Sara M. Flynn, "Self-regulation and Bias," *Group Processes & Intergroup Relations*, 13, no. 2 (2010): pp. 183-200, https://doi.org/10.1177/1368430209353633.

[154] Thomas F. Pettigrew and Linda R. Tropp, "Allport's Intergroup Contact Hypothesis: Its History and Influence," *On the Nature of Prejudice: Fifty Years After Allport* (2005): pp. 262-277, https://doi.org/10.1002/9780470773963.ch16.

[155] Fridell, "Producing Bias-free Policing".

[156] Patrick S. Forscher et al., "A Meta-analysis of Procedures to Change Implicit Measures," *Journal of Personality and Social Psychology*, 117, no. 3 (2019): pp. 522-559, https://doi.org/10.1037/pspa0000160.

[157] Doyin Atewologun, Tinu Cornish, and Fatima Tresh, "Unconscious Bias Training: An Assessment of the Evidence for Effectiveness" (Manchester United Kingdom: Equality and Human Rights Commission, 2018), https://www.equalityhumanrights.com/sites/default/files/research-report-113-unconcious-bais-training-an-assessment-of-the-evidence-for-effectiveness-pdf.pdf.

[158] Renee J. Mitchell and Lois James, "Addressing the Elephant in the Room: The Need to Evaluate Implicit Bias Training Effectiveness for Improving Fairness in Police Officer Decision-making," *Police Chief Magazine,* 2018, https://www.policechiefmagazine.org/addressing-the-elephant-in-the-room/.

[159] Robert Worden et al., "The Impacts of Implicit Bias Awareness Training in the NYPD" (International Association of Chiefs of Police/University of Cincinnati Center for Police Research and Policy, July 2020), https://www.theiacp.org/sites/default/files/2020-09/NYPD%20Implicit%20Bias%20Report.pdf.

[160] *Ibid.*

[161] Katherine B. Spencer, Amanda K. Charbonneau, and Jack Glaser, "Implicit Bias and Policing," *Social and Personality Psychology Compass* 10, no. 1 (2016): 50-63, https://doi.org/10.1111/spc3.12210.

[162] Center for Criminal Justice, "Effectiveness of Police Training".

Officer Wellness

Academies often stress the importance of maintaining proper physical health through fitness training and proper nutrition. Physical fitness can reduce an officer's risk of injury in the line of duty and can allow officers to perform their jobs more effectively. As a result, many departments impose strict requirements for physical fitness in the academy. However, just as important to an officer's safety and effectiveness in their job is their overall wellness and mental health. Policing can take a significant toll on mental health: officers must remain vigilant while working long hours, they are often exposed to crisis and tragedy, and they frequently encounter verbal abuse and scrutiny. Officers are therefore likely to experience stress, anxiety, and other mental states. This can negatively affect their judgment under pressure and make it harder for them to connect with others, thereby reducing their effectiveness in serving the community.[163]

In addition, when stress from the job accumulates, it can lead officers to burnout, depression, and even suicide; officers are 2.4 times more likely to die by suicide than homicide, while they are almost twice as likely as the general public to experience suicidal ideations.[164] More departments are recognizing this and are beginning to develop programs in and outside the academy to address overall wellbeing, rather than just physical wellbeing. While doing so allows officers to be more effective at their jobs and keeps them safer, it also acknowledges that officers are not emotionless soldiers, but are ordinary human beings who deserve care and support in their jobs.

One particularly successful program is the San Diego Police Department's Wellness Unit, where a more comprehensive approach to wellness was developed in response to several tragic incidents involving mentally unstable officers. With the introduction of the Wellness Unit, officer-wellness services like peer support, psychologists, and stress management training were centralized, and a robust culture of wellness was created. The program attempts to normalize wellness services by training recruits early in the academy on emotional survival and providing accessible resources to all new officers. The unit also offers a two-day effective interactions training course and various workshops to respond to troubling emerging trends in wellness. A PERF review of the wellness program in 2017 found that 70 percent of officers in the program felt that the stigma associated with asking for help was decreasing, while 79 percent of officers said they would feel comfortable walking into the wellness center—good evidence that the program is successful in creating a culture of wellness.[165] [166]

Nationally, the Bureau of Justice Assistance (BJA) offers the *Officer Robert Wilson III Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability (VALOR) Initiative*, which provides training programs and resources to promote immediate and long-term officer safety, wellness, and resilience.[167] While they offer several different programs, the *Law Enforcement Agency and Resilience Training Program* has been subject to recent evaluation.[168] This three-day program aims to provide law enforcement personnel the resources needed to manage stress, overcome challenges and adversity, and

[163] Deborah L. Spence, et al., "Law Enforcement Mental Health and Wellness Act : Report to Congress" (Community Oriented Policing Services, 2019), 1, https://cops.usdoj.gov/pdf/2019AwardDocs/lemhwa/Report_to_Congress.pdf.

[164] Police Executive Research Forum, "Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department" (Police Executive Research Forum, 2018), 5, https://www.policeforum.org/assets/SanDiegoOSW.pdf.

[165] *Ibid.*

[166] For a more precise detail of the services offered and the steps taken to build the program, see the full report.

[167]Bureau of Justice Administration, "VALOR Officer Safety and Wellness Initiative," *Bureau of Justice Assistance, n.d.,* https://bja.ojp.gov/program/valor/overview#ugj9n.

[168] Hannah D. McManus, Nicholas Corsaro, and Robin Engel, "An Evaluation of the VALOR Law Enforcement Agency and Officer Resilience Training Program," *2020* (Submitted to the International Association of Chiefs of Police).

thrive in their professional and personal lives.[169] This training was evaluated at three police departments between 2018 and 2019, where researchers assessed attitudinal changes and perceived skill acquisition. Survey results suggested trainees were receptive and satisfied with the training, though there were limited statistically significant differences across trainees' self-reported resilience, mental health, and wellness. The authors noted several methodological limitations that precluded strong statements regarding the impact of the training program on law enforcement, indicating additional research was needed to assess training impact.[170]

Psychological Skills

Though police academies provide some training for psychological skills, it is often undervalued as compared to physical skills. Effectively navigating high-stress situations in which an officer might need to use force requires intense psychological training. According to a paper on new directions in police academy training by several psychological, police, and academic experts, this not only involves proper cognitive skills like decision-making, impulse control, conscientiousness, and adaptability, but emotional, social, and moral skills as well.[171]

For training and assessing cognitive skills, many departments currently rely on performance in other training areas.[172] However, departments need to design specific and standardized courses to directly assess cognitive aptitude. In addition, developing a recruit's independent decision-making skills is often impeded by the paramilitary model, which tends to micromanage cadet training and inform them exactly what to do at all times.[173] Instead, embracing the adult-learning model by providing discussions in break-out groups and simulations of high-stress scenarios can be more effective.

More must also be done to address officer's emotional skills, as an officer's emotional knowledge greatly affects how effectively they perform on the job. To remain composed in high-stress situations requires the ability to regulate one's own emotions, as well as the ability to recognize emotions in others. Research has shown that police officers can be taught to improve their emotional regulation skills, as well as their emotional intelligence.[174] [175] Instituting comprehensive officer wellness programs is important to the development of these skills, as are teaching techniques like breathing and mindfulness, and encouraging physical fitness, sleep, and proper hygiene.[176]

To establish valuable relationships with members of the community, officers must have proper social skills. As with cognitive and emotional skills, social skills like social competence (communicating tactfully and respectfully with others), teamwork, and persuasiveness can be taught and strengthened through a reformed academy culture. As noted earlier, when instructors of the paramilitary model berate and talk down to cadets, this effectively teaches cadets to do the same to the people they eventually serve. By instead treating cadets respectfully and providing them with the opportunity to lead as individuals, a training

[169] https://www.theiacp.org/projects/law-enforcement-agency-and-officer-resilience-training-program

[170] Hannah McManus et al., "An Evaluation of the VALOR Law Enforcement Agency and Officer Resilience Training Program".

[171] Blumberg et al., "New Directions in Police Academy Training: A Call to Action".

[172] *Ibid*, 4.

[173] *Ibid*, 5.

[174] Matthias Berking, Caroline Meier, and Peggilee Wupperman, "Enhancing Emotion-Regulation Skills in Police Officers: Results of a Pilot Controlled Study," *Behavior Therapy,* 41, no. 3 (September 2010): 329-339, https://doi.org/10.1177/1748895814566288.

[175] Nicola Schutte, John Malouff, and Einar Thorsteinsson, "Increasing Emotional Intelligence Through Training: Current Status and Future Directions," *The International Journal of Emotional Education, 5, no.* 1, 56–72, https://psycnet.apa.org/record/2013-27507-005

[176] Blumberg et al., "New Directions in Police Academy Training: A Call to Action," 7.

culture like that of the WSCJTC can help foster respectful communication skills in all cadets. Additionally, academies can design training programs to boost skills like persuasiveness through scenario work.

Finally, since police work also carries extreme moral challenges, academies need to foster moral maturity and integrity. Building these skills can be achieved by exposing cadets to moral risks in the academy; during case studies and scenario-training, cadets should consistently be asked to discuss what they would do and explain why. Academies might also benefit from supporting spiritual and religious commitments of cadets (when applicable), which might further help in instilling moral skills.

The Peace Officer Psychological Screening Manual, produced by the California Commission on Peace Officer Standards and Training (POST), has been at the forefront of providing guidance on all phases and aspects of the psychological evaluation process and includes many of the listed recommendations.[177] The Commission continuously revises its recommendations based on American Psychological Association Research, and it offers evidence-based reasoning in support.

Conclusion

In summary, although few forms of police training have been subject to scientific review, scholarship in this area is growing. Some forms of police training, including de-escalation training and procedural justice training have received recent empirical evaluation.[178] [179] [180] These training programs have been correlated with several positive outcomes, such as reductions in use of force incidents, reductions in injuries, and increases in officer knowledge and skills. In contrast, training programs on implicit bias, peer intervention, officer wellness, and psychological skills have less evidence as to their efficacy but some of the initial findings are promising. While many of these types of programs have received some level of empirical evaluation, PERF found that, on average, officers do not spend a lot of time on these topics.[181]

Scholars note that police training is outdated and needs to include evidence-based, theory-informed curricula and delivery, which will ultimately improve learning and skill retention.[182] [183] A comprehensive review of the police training literature base has found that there is little evidence around police training modalities[184] and the existing literature is mostly hypothetical or based on other study populations. Despite these limitations, several of these studies point towards the utility of repeated content exposure and practice[185] [186] or booster programs.[187] The CCJ recommends that training content be delivered through a mixture of lecture, real-world video examples, scenario-based role playing, and group discussion.[188]

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[177] Shelly Spilberg and David Corey, "Peace Officer Psychological Screening Manual," *California Commission on Peace Officer Standards and Training*, 2014, https://post.ca.gov/portals/0/post_docs/publications/psychological-screening-manual/Peace_Officer_Psychological_Screening_Manual.pdf.

[178] Engel et al., "Examining the Impact of ICAT".

[179] Goh, "Did De-escalation Successfully Reduce Serious Use of Force in Camden County, New Jersey?".

[180] Nagin & Telep, "Procedural Justice and Legal Compliance".

[181] Police Executive Research Forum, "Critical Issues in Policing Series".

[182] Birzer, "The Theory of Andragogy Applied to Police Training".

[183] Mugford et al., "Improving Police Training From a Cognitive Load Perspective".

[184] Lum et al., "An Evidence-assessment of the Recommendations of the President's Task Force".

[185] Kang, "Space Repetition Promotes Efficient and Effective Learning".

[186] Mugford et al., "Improving Police Training From a Cognitive Load Perspective".

[187] McLean et al., "Randomized Controlled Trial of Social Interaction Police Training".

[188] Center for Criminal Justice, "Effectiveness of Police Training".

We highlight the potential benefit of adopting resiliency-based training approaches as opposed to the traditionally taught, military-style training approaches. We contend that this approach enhances the ability of police academies to establish a guardian-centric culture that focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations.

Collectively the evidence suggests that police academies should reconsider the content and duration of training topics, along with their overall approaches for effective adult learning. Echoing the conclusions of the CCJ and many other experts in the field, we recommend a shift of the APD Training Academy away from a stress-oriented military style toward a resiliency-based approach supported by adult learning and student-centered instruction. Importantly, we encourage the APD to become an evidence-based learning organization, where changes in Academy training are rigorously tested and research findings are routinely shared with Academy staff and trainers to inform continual improvements in the curricula offered.

5 APD TRAINING ACADEMY – FINDINGS AND ANALYSIS

The Austin Police Department is the principal law enforcement agency serving Austin, Texas. With over 2,400 personnel, including approximately 1,800 sworn officers, and a budget of over $375 million, APD is the fourth largest police department in the state of Texas. With ten patrol divisions and more than three dozen specialized units, APD serves a city of just under one million people and a geographical jurisdiction that spans 296.2 square miles.

The APD Training Academy is a self-described "state-of-the-art training facility"[189] located in southeast Austin, near the Austin-Bergstrom International Airport. The Academy facility contains classrooms, workout facilities, a firearm range, and a driving track. Academy staff includes the Training and Recruiting Units, all of whom work from the Academy grounds. The facility is shared by APD, the Austin Fire Department, and Austin-Travis County Emergency Medical Services. All police cadets train at the Academy for the duration of the training period. Cadets do not reside at the Academy and training hours are typically Monday to Friday from 7:00 a.m. to 4:00 p.m., with occasional night and weekend sessions.

Cadets selected to attend the Training Academy are assigned to either a Regular or Modified Academy.

- The Regular Academy is currently a 32-week program for police officer candidates with no prior law enforcement experience (starting with the 144th cadet class, cadets in the Regular Academy will also participate in a two-week community immersion program prior to the start of Academy training). Upon graduation, newly appointed officers are placed into a 12-week Field Training Program with a certified Field Training Officer (FTO). After successful completion of the Field Training Program, the officer is assigned to a permanent patrol shift, reporting to a corporal and sergeant.
- The Modified Academy is an approximately 17-week program for candidates with prior law enforcement experience deemed sufficient to qualify for a shorter, modified training program. Upon graduation, newly appointed officers are placed into an 8-week Field Training Program with a certified FTO, after which they are assigned to a permanent patrol shift reporting to a corporal and sergeant.

Cadet training consists of a combination of Physical Training, Academics, and Skills Training, and cadets are taught through a combination of classroom-based learning, hands-on physical and partner training, and scenario-based and role play instruction. The Training Unit, which is responsible for all cadet training, is divided into three separate sub-units: Cadet Training, Learned Skills, and Continuing Education.

In assessing the Academy, we have focused on a number of key areas, including Academy diversity, culture, teaching methods, cultural competency training, community input and participation, professionalism, cadet injuries and roadblocks to graduation, crisis intervention training, de-escalation and use-of-force training, the Field Training Officer program, and other issues of importance. Although the primary emphasis of our review has been on the readiness of the planned 144th cadet class in light of the City's stated objectives, we have also focused on the long-term potential for developing a transformational, best-in-class police training academy.

[189] https://www.apdrecruiting.org/academy

KROLL

KEY FINDINGS

Based on interviews conducted and documents and other sources reviewed, Kroll makes the following key findings and observations concerning the areas highlighted below:

5.1 Academy Diversity

Leadership. Academy leadership and supervisory staff currently reflect a significantly improved level of gender, racial, and ethnic diversity than in years past.

- The ten APD personnel who make up the ranks of Academy supervisory staff in the Cadet Training Unit (Commander to Corporal) as of March 15, 2021, include three females (Commander, Lieutenant of Cadet Training, and Sergeant of Learned Skills), two African American males (Sergeant of Cadet Training and Corporal of Learned Skills), and one Latino male (Sergeant of Cadet Training). Two of the female supervisors are also of Asian/Pacific Islander descent.
- Similarly, the Recruiting Unit supervisory staff presently consists of five APD personnel from Commander to Sergeant, including two females (Commander and Sergeant of Recruiting) and two African American males (Lieutenant of Recruiting and Sergeant of Recruiting II). The Recruiting Unit also includes significant racial and gender diversity at the officer and civilian ranks. Of the 18 officers assigned to the Recruiting Unit, seven are female, six are African American, and three are Hispanic (there are currently no Asian officers in the Recruiting Unit).

Training Unit. Overall, the Training Unit at the Academy shows the following gender and demographic breakdown as of March 15, 2021:

	# Personnel by Unit	Training Units by Ethnicity [1]							Training Units by Gender [1]	
		White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Cadet Training	15	53.3%	13.3%	6.7%	20.0%	-	6.7%	-	73.3%	26.7%
Learned Skills	17	52.9%	23.5%	17.6%	5.9%	-	-	-	94.1%	5.9%
E-Learning	3	100.0%	-	-	-	-	-	-	100.0%	-
Advanced Education/CE	11	54.5%	45.5%	-	-	-	-	-	100.0%	-
All Training Units	46	56.5%	23.9%	8.7%	8.7%	-	2.2%	-	89.1%	10.9%

NOTE: [1] Based on 03/15/2021 Roster compiled by APD HR.

- Although Academy instructors overall are less diverse, at the officer ranks within the Academy there is more diversity than had been the case historically. For example, the 14 instructors assigned to the Cadet Training Unit include two females (one of whom is Hispanic), three Asian or Pacific Islander males, and a Hispanic male. Although there are currently no Black male or female instructors, the Lieutenant in charge of the unit recently looked into applicant pools for instructor positions and discovered that, within the past approximately five to six years, not a single Black male or female officer had applied for a vacant instructor position. Since hiring a Black male sergeant, the Cadet Training Unit has begun more affirmatively addressing the lack of racial diversity within the unit. As a result, the Cadet Training Unit has since seen an increased number of African American applicants and, with a recent vacancy posting for three positions, the unit is actively working to recruit African American and other diverse candidates for these positions.

- The Learned Skills Unit instructors consist of 14 men and no women (although there is one female supervisor, as noted above), of which eight are white, two Black, and four Hispanic.
- The instructors and supervisors in the Advanced Education and E-learning units are entirely male, of which nine are white and four Hispanic (plus one Hispanic male with a temporary assignment).
    - Leadership is well aware of the need to further increase racial, gender and ethnic diversity among the ranks of Academy instructors, and APD claims to be actively in the process of recruiting diverse officers to fill the ranks of current vacancies.
    - There seem to be a variety of reasons why the Academy has had difficulty increasing diversity among its pool of instructors, including financial disincentives (a loss of overtime and shift differential pay), physical fitness requirements, and a perception that instructor positions lack prestige or a pathway to promotion. Kroll notes, however, that other professional benefits counter these perceived disincentives, including better work schedules, additional training opportunities, access to Academy exercise facilities, and the satisfaction of teaching future officers.[190]
    - Although APD's Chief of Police has the authority to unilaterally order transfers to the Academy in an attempt to increase diversity, the former Chief was reluctant to do so. Nevertheless, this is an additional tool in the Chief's toolbox that can be deployed if needed to enhance instructor diversity. For example, when the Boston Police Department faced a shortage of diverse investigators in their homicide unit several years ago, the department actively recruited candidates of color to apply for open positions and, when recruited officers expressed reluctance to make a change due to the intensity of the work and the quality of life that their current job assignment provided them, the Chief affirmatively ordered temporary transfers for the betterment of the department with the understanding that the officers could transfer back at the end of a year.

Recruiting Unit. The Recruiting Unit as a whole contains the following gender and demographic breakdown:

		Recruiting Units by Ethnicity [1]							Recruiting Units by Gender [1]	
	# Personnel by Unit	White	Hispanic or Latino	Black or African American	Asian	Choose Not To Disclose	Two or more races	American Indian / Alaska Native	M	F
Recruiting Teams 1 & 2	18	50.0%	16.7%	33.3%	-	-	-	-	61.1%	38.9%
Explorers/PAL	5	20.0%	40.0%	20.0%	20.0%	-	-	-	100.0%	-
All Recruiting Units	23	43.5%	21.7%	30.4%	4.3%	-	-	-	69.6%	30.4%

NOTE: [1] Based on 03/15/2021 Roster compiled by APD HR.

- Overall, the Recruiting Unit contains a diverse team of recruiters and background investigators and has developed a broad and effective outreach program that extends to other cities and states targeting historically black colleges and universities, Latinx organizations, women, and military veterans, among others.

Diversity of Planned 144th Cadet Class. The list of eligible cadet candidates who are currently expected to attend the 144th cadet class consists of one of the most diverse classes in recent APD history, as reflected

[190] See APD Training Academy Curriculum Review, page 4 (discussing Instructor Surveys) (June 19, 2020).

in the below charts (updated 3/31/2021).[191] As noted, there are currently 77 candidates that have been approved (down from 95 candidates as of December 10, 2020, due to attrition caused by the delay in re-starting the Academy). An additional 15 candidates have made it to Stage 2 testing. If those candidates are all approved, there will be a total of 92 cadets in the 144th cadet class. The below charts show the ethnic and gender make up of these two pools of cadet candidates. The first chart shows the total numbers and the second chart shows the percentage breakdown:

		Academy Class 144 by Ethnicity [1]					Class 144 by Gender [1]	
	# Candidates by Group	White	Hispanic or Latino	Black or African American	Asian / Islander	Other	M	F
Hired Candidates	77	33	27	11	3	3	65	12
Scheduled for Stage 2 Testing	15	5	6	4	-	-	9	6
All Candidates	92	38	33	15	3	3	74	18

NOTE: [1] Based on "*144th demographics.docx*" provided 03/31/2021.

		Academy Class 144 by Ethnicity [1]					Class 144 by Gender [1]	
	# Candidates by Group	White	Hispanic or Latino	Black or African American	Asian / Islander	Other	M	F
Hired Candidates	77	42.9%	35.1%	14.3%	3.9%	3.9%	84.4%	15.6%
Scheduled for Stage 2 Testing	15	33.3%	40.0%	26.7%	-	-	60.0%	40.0%
All Candidates	92	41.3%	35.9%	16.3%	3.3%	3.3%	80.4%	19.6%

NOTE: [1] Based on "*144th demographics.docx*" provided 03/31/2021.

- By comparison, the 143rd cadet class, which graduated 42 cadets in October 2020, was 50% white, 33% Hispanic, 12% Black, and 2% Asian. The percentages as to race and ethnicity (though not gender) for both the 143rd cadet class and planned 144th cadet class compares somewhat favorably to the 2019 census estimates, which show Austin as 48% white, 34% Hispanic, 8% Black, and 7% Asian. Note that the 143rd cadet class originally had 57 cadets, of which 15 did not graduate.

Anti-Racism Training. There are recent indications that APD leadership is making an intentional effort to enhance knowledge and understanding of racial equity issues. Within the past year, APD leadership attended two anti-racism workshops to address and better understand issues of systemic and institutional racism within the department. For example, in February 2020, Academy leadership and cadet instructors attended *Beyond Diversity: Courageous Conversations About Race*, led by Dr. Glenn Singleton. In September 2020, 18 APD leaders attended a two-day "Groundwater Analysis of Racial Inequities" workshop led by Joyce James Consulting LLC. By all accounts, both seminars were well received, with some talk among APD leadership of possibly incorporating one of these workshops into cadet training or annual training for Academy instructors.

[191] Data and classifications provided by APD.

- These workshops are designed to address larger issues of race and society, including issues of systemic and institutional racism. Police departments across the country struggle with accepting that their enforcement actions disparately impact communities of color. When speaking to Academy staff and APD personnel, Kroll heard frequently that APD does not make decisions based on race or ethnicity. Officers who are ethical and moral believe they would never intentionally discriminate or racially profile a subject. Getting officers to understand how long-standing systems of policing and society disparately impact communities of color can help establish a foundation to change police culture and positively impact community-police relationships.

Women's Mentorship Program. In 2019, the Academy developed a mentorship program for female cadets to help prepare and guide them through the Academy. The program was started by a female lieutenant after learning that the percentage of female officers employed at APD (approximately 10%) was less than the national average (13% overall and 17% for larger agencies), and that the female attrition rate at APD was also significantly above the national average, according to her research. The mentoring program, which was adopted as part of APD's 140th cadet class, attempted to provide support to female cadets by assigning them female officer mentors within the department. The goal was to provide guidance, encouragement, and assistance to female cadets as they navigated the various complexities they might face in the academy. Despite high hopes, the initial mentoring program was not successful at reducing female attrition. Of the 17 women who began the 140th Academy class, only four graduated.

The lieutenant who started the program teamed with an academic researcher to conduct additional research into the program and to obtain feedback from the program participants. Based in part on this feedback, adjustments were made to the mentoring program to address some of the concerns regarding potential conflicts in cadets reporting complaints about the Academy to their mentors, who might be perceived as having certain obligations pursuant to APD's chain of command, particularly if they were part of Academy staff. Assigning female officers within the department who do not work at the Academy as mentors generally mitigates this concern.

Overall, despite some conflicting information from former cadets, the feedback from cadets and mentors who have participated in the mentoring programs has been largely positive. Many female cadets have found that having a mentor within the department provides someone with whom they could address the stresses and anxieties associated with the training program, particularly as a female cadet, such as the physical component of training and the male-dominated instruction.

There currently are no other formal mentoring programs within the department. Developing additional mentoring programs for all cadets who believe they could benefit from having a mentor while in the Academy could help relieve some of the stresses all cadets inevitably face in the training environment and could prove particularly valuable to cadets of color. While cadets typically bond with their classmates, another classmate may not be able to help or provide appropriate guidance to a fellow cadet experiencing an issue or concern, as they are learning right along with their fellow cadets. But being able to confidentially consult with another officer in the department who has already experienced what the cadet has experienced may help put the cadet at ease knowing there is someone he or she can turn to for potential guidance.

LGBTQ+ Training. The Academy appears to do a good job of training cadets on LGBTQ issues, with two hours each of course content devoted to policing and transgender issues taught by an openly transgender instructor, and an introduction to LGBTQ issues traditionally taught by Sergeant Michael Crumrine, the president of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement.

- The transgender course occasionally includes a guest speaker to discuss transgender issues from a parental standpoint. The speaker is the parent of a transgender daughter and the head of security and operations at a local community college. He is relatable to cadets and provides powerful testimony from a father that helps build empathy and understanding on transgender issues and the prejudices and stresses confronting transgender individuals.
- That said, the Academy needs to do a better job of incorporating awareness of LGBTQ issues into tactical training taught in the Learned Skills Unit. For example, we were informed that Learned Skills does not teach cadets how to properly search Transgender individuals (they only teach male/female searches). What are respectful ways to approach it? What questions should officers ask of transgender subjects? How can the Academy properly equip cadets for respectfully handling these sensitive issues when confronted with them on the streets? Many Learned Skills instructors have traditionally been uncomfortable with transgender issues, but this needs to change if the department is to be a truly community-oriented police agency. Officers need to be trained tactically and properly prepared for all sorts of scenarios they will eventually face. APD will not gain community trust if officers are not perceived as empathetic to all communities in Austin, and they need just as much training in these areas as in tactics and procedure.
- Moreover, on a department-wide basis, the APD needs to improve training and educating officers in how to treat the LGBTQ+ community with dignity and respect. While cadets who have graduated from the Academy within the past six to seven years have received excellent training on transgender and LGBTQ issues, this training has not been pushed out to the department as a whole. Consequently, officers who graduated from the Academy more than seven years ago—including the "Fifth Floor" leadership at APD—have not received any department-sanctioned training on understanding the unique issues associated with the LGBTQ+ community,[192] such as the heightened threat of violence faced by LGBTQ+ individuals; the LGBTQ+ community's historical reluctance to report matters to the police; understanding present-day and historical relations between law enforcement and LGBTQ+ communities in the United States and the challenges and barriers faced by LGBTQ+ crime victims; the protocols for police interactions with LGBTQ+ individuals during searches, arrests and booking procedures, recordkeeping and report writing; and ensuring appropriate, lawful and safe treatment of LGBTQ+ suspects and detainees, and necessary medical care.
    - Some areas of particular note in which the department has lacked adequate training include: properly reporting the name, pronouns, and gender of individuals who are transgender, non-binary, or gender non-conforming; familiarizing officers with intimate partner violence involving LGBTQ+ individuals and how to assess incidents that are appropriate for same-sex relationships or those that involve trans partners; and being sensitive to the unique reporting barriers and challenges in the LGBTQ+ community, including fears of being marginalized, outed, abused, or ridiculed as a transgender or non-gender conforming person. It is imperative that all APD personnel receive comprehensive training about LGBTQ+ individuals and communities, including history, culture, contributions, challenges, and needs. Effective training will offer practical guidance for improving police-citizen interactions with LGBTQ+ individuals.

[192] The term "LGBTQ+" refers to the broad group of people who do not conform to traditional expectations with respect to gender or sexual orientation, including lesbian, gay, bisexual, transgender/non-binary, and queer individuals, as well as those who are intersex, two-spirit, asexual, and many others.

Overview of APD Online Recruiting Materials

The Austin Police Department's official online recruitment outlets include its Facebook, Twitter, Instagram, and YouTube accounts, as well as its website, https://www.apdrecruiting.org/. An overview of these outlets, including a description and analysis of their contents, is provided below.

Facebook
The official Facebook account of APD Recruiting is @JoinAPD and includes videos, photos, and written posts. There are 38 videos posted to the page, including short outlines of four specialized units (Air Support Unit, Patrol K9 Unit, Bomb Squad, and Lake Patrol), informational presentations on the application and hiring processes, and miscellaneous videos showing workouts, promos, media features, and officer testimonials. Several hundred photos have been uploaded, including officer profiles, police-community interactions, and informational posters. One or two posts are added each week, including additional photos and information about recruitment events and the application process.

Many of the posted videos include diverse voices and depict a fun but disciplined academy environment. The presentations, interviews, and specialized units' videos also provide important and transparent information on the Academy. However, the Patrol K9 and Air Support Unit videos display the paramilitary and warrior side of policing, as they include clips of high action and sometimes aggressive policing sequences. While this is surely representative of part of the job, as a recruiting tool, it may attract candidates interested more in fighting criminals than serving or protecting the community. Additionally, all officers interviewed in these specialized unit videos were white males, suggesting a lack of diversity in these units.

The majority of posts and photos on the Facebook page spotlight positive police and community interactions and promote a police department dedicated to serving the community. For instance, there are posts showing officers attending community events, visiting young students, and walking with and listening to protesters following the murder of George Floyd. In addition, the department appears to have made a concerted effort to promote diversity in officer profiles, including the active recruitment of women. The page was created in 2009, and while early posts highlight weapons and use of force training, an overemphasis of which might also re-enforce the warrior mentality, in recent years these posts have become infrequent. The department should continue to highlight diversity and effective community policing on this page, but care should be taken to ensure that the department's actions, policies, and culture match those espoused in its public recruitment efforts.

Other Social Media
The recruiting team's Twitter and Instagram pages are both @JoinAPD, and feature much the same content as its Facebook page. While Twitter posts are slightly more frequent than Facebook posts, they likewise include officer profiles, event promotions, and examples of community interactions. All of the Instagram photos are included on the Facebook page. The YouTube account ("Austin Police Department Recruiting Unit") and most of its videos are a subset of those on the Facebook page. In addition, the YouTube page shares videos from ATXN and other news networks featuring interviews and spotlights of women in the APD, as well as several episodes of a four-part series on the Austin Explorers, which follows two Austin youth in a four-week program designed to highlight career opportunities in law enforcement. While these videos show diverse youth developing communication and leadership skills, the program adopts a paramilitary model. The page also includes a video from the Austin Police YouTube account overviewing the department and its efforts to build trust in the community, as well as a six-minute recruiting video shared by ATXN espousing the values of integrity, accountability, respect, and ethics within the department.

Website
The APD Recruiting Website provides prospective applicants with information about APD and its training academy. Under "The APD" tab, the website offers a brief overview of the department's merits and benefits, displays officer testimonials, and describes APD's commitment to the community beyond policing. Additionally, there is a page displaying testimonials specifically from women in the department, and a page describing the department's inclusion and appreciation of military veterans. Under the "Careers" tab, the website describes the application process, prospective pay and benefits, and several of the possible career paths for APD officers. The "Academy" tab contains a brief description of the regular academy and the modified academy, as well as a more detailed description of the components for cadet training. The website also offers a waiting list to participate in APD's Officer Ride-Along Program prior to applying. Additionally, there is a page dedicated to promoting the city of Austin, as well as an FAQ and Contact page.

LGBTQ+ Recruiting. The Academy's current efforts to recruit in the LGBTQ community include setting up a recruiting booth at the Austin Pride festival, highlighting the work of APD's LGBTQ officers, staffing the recruiting team with officers from the LGBTQ community, and adapting the hiring process to meet the current needs of the LGBTQ community (for example, Stage 1 testing in APD's hiring cycles allows for transgender applicants to test with the gender they identify as during the physical fitness assessments). The department also participates in the Pride parade and displays a picture of former Chief Manley marching in the Pride parade on the APD recruiting website page. APD recruiters are also encouraged to

seek out opportunities and generate ideas to market to the LGBTQ community, including working with the APD Office of Community Liaison LGBTQ representative and the Lesbian and Gay Police Officer's Association. In the past, members of APD have collaborated with the Trevor Project to produce a video aimed at preventing suicide among LGBTQ teens and publicly celebrated the transition of a transgender officer within APD.

Despite these efforts, the belief among openly gay officers we spoke with was that the department needs to be more proactive in recruiting LGBTQ candidates. Some examples of things the department does not currently do that would improve its outreach and recruiting in the LGBTQ community include partnering with Out Youth Austin, an organization that allows youths of all sexual orientations and gender identities a place where they are acknowledged and accepted for who they are; actively engaging with the Gay-Straight Alliance and queer-identified organizations on college campuses; and recruiting LGBTQ+ service members who want to stay in public service after they serve.

- In addition, the hiring standards of the department are perceived as somewhat antiquated, which further inhibits efforts to recruit members of the LGBTQ+ community. These standards and other aspects of the APD recruiting program will be a major focus of the next phase of Kroll's review.
- Moreover, although there is a civilian liaison to the LQBTQ+ community, supplementing that position with a sworn officer to serve in that function would help recruiting efforts.

5.2 Academy Culture

The culture of a police training academy reflects the culture of a department and impacts the mindset and approach to policing that newly sworn officers adopt upon graduation. How cadets are treated, how they are expected to act, what explicit and implicit messages are communicated to cadets – all of these things impact the type of police officer a training academy is trying to mold prior to sending him or her out into the community. While not everything about policing can be taught at the Academy, the physical and classroom components taught there are the primary formative experiences of each cadet before becoming a sworn officer.

In conducting this assessment, Kroll solicited a wide array of insight, experiences, and observations concerning APD Academy culture, and we received widely disparate views about the validity of the way things have traditionally been done within APD. We have therefore divided this section into two sub-sections. First, we provide a mostly critical view of Academy culture and training that was provided by several former cadets from the 137th and 140th cadet classes, supplemented by input from some recent graduates of the 143rd cadet class. However, because many of the negative aspects highlighted by the former cadets—which were supported by corroborating evidence and were consistent with the descriptions of past training practices as described by many current APD officials—have been modified within the past two years or so, we also provide a more up-to-date overview of Academy culture as it presently exists.

5.2.1 Academy Culture – A Critical View

Academy Culture as Described by Former Cadets. Kroll conducted detailed and comprehensive interviews of six former APD cadets from the 137th and 140th cadet classes. The statements and information provided by these former cadets were corroborated by personal documentation, including medical records, emails, text messages, Workman's Compensation Records, and, in one instance, a telephone recording between a cadet's father and an APD official.

Four of the cadets interviewed were enrolled in the 137th cadet class (May 2017 - December 2017), while two of the former cadets were enrolled in the 140th cadet class (October 2018 - May 2019). As indicated in the below chart, all of the cadets were separated from the Academy for physical training-related injuries.

Class #	Race	Gender	Official Reason for Separation	APD Separation Status
137	W	M	Failed Fight Day (3 attempts)	Involuntary*
137	B	F	Not physically ready / returning from light duty	Voluntary
137	W	F	Problems with family, police culture and fear of guns; injury to upper extremities during Fight Day	Voluntary
137	W	M	Injured during Fight Day (fractured rib)	Voluntary
140	W	F	Stress Reaction Training - not physically prepared	Voluntary
140	H	F	Stress Reaction Training - not physically prepared	Voluntary

*APD documentation lists this cadet as leaving for involuntary reasons; however, the cadet reported that he was coerced into signing a separation form indicating that he chose to leave voluntarily.

Although each of the cadets signed a separation form indicating that they voluntarily resigned from the Academy, they each claim they were essentially coerced into signing the forms when presented with the choice of voluntarily resigning or being terminated involuntarily. When cadets are terminated, they are prevented from ever again working in law enforcement in the State of Texas. Faced with this decision, most cadets resign voluntarily to avoid losing the ability to apply to other police departments in the state. This process was described sardonically by an APD official as a "voluntary-involuntary resignation" and also noted in the report on Racial Inequities and Institutional Racism by Joyce James LLC (2020), at page 20: "Certain cadets are targeted and pressured relentlessly, then asked to resign or be fired. In the latter case, they would likely be banned from future law enforcement jobs in the whole state."

Many of the former cadets interviewed became visibly emotional when answering questions, and it was readily apparent that all of the cadets were serious applicants who exerted significant effort and made personal sacrifices—such as leaving their prior employment and relocating their families—in the hope of becoming sworn members of the APD. The findings and themes of these interviews are summarized below.

General Training Experiences

"Warrior" Culture. Each of the former cadets interviewed said that their Academy class taught the "warrior mentality" from the moment training began. They called the environment "toxic," "abusive," and "combative." They felt that the methods used to teach embraced "intimidation tactics." Instructors frequently yelled and cursed at the cadets. Cadets were punished in "smoke sessions" – i.e., physical punishment exercises designed to punish the entire class for one or more cadets' "mistakes." The cadets felt that the instructors lacked empathy and did not care about their well-being, which they believed would create police officers who were indifferent to the community.

Selective ridicule. Instructors chose specific people to relentlessly ridicule and mock, which occurred mostly during outside physical training and smoke sessions. Some of the cadets noted that those selected to be ridiculed tended to be minorities, females, smaller-statured cadets, older cadets (late 20s and older), and anyone who was perceived as unable to keep up with other cadets during a specific training session or who did not conform to a rule (stated or unstated). There appeared to be a particular bias against female cadets, which seemed to correspond to fewer females graduating. The bias exhibited by the instructors was

primarily driven by the perception that particular cadets could not meet the required physical fitness expectations needed to become an APD officer.

Bias-based instruction. Although the cadets found the course work challenging, some Academy instructors implicitly taught their students to be biased in enforcing the law. For example, the instructors discussed crime-fighting examples and showed films/video that frequently incorporated persons experiencing homelessness, minorities, and sex workers. The instructors made comments suggesting that cadets should target these groups on slow nights, implicitly suggesting that these population subgroups were a societal nuisance and basically worthless. One cadet reported: *"A firearms instructor asked us to routinely pick out someone out of a crowd. It could be at the grocery store, a game, he threw a few scenarios out there for us. He said pick that person and ask yourself, "How would I kill that person?"*

As a result, some of the cadets perceived that the bias was inherently a part of Academy culture and that instructors were indoctrinated into that culture. According to the cadets interviewed, while APD "talked a good game" about being inclusive, in reality, they perpetuated exclusion. One cadet noted that, while *"on day one of training, one of the instructors stated if you have bias, you cannot bring it to work,"* it sounded as if the instructor had read from a rule book and it was not subsequently reinforced.[193]

Anti-community bias. Two cadets recalled a female sergeant coming into their class asking the cadets why they wanted to be police officers. Before soliciting an answer to the question, the sergeant stated, *"You better not tell me it is because you want to help people, or I will punch you in the fucking face."* The message absorbed by the cadets was that the Austin community was the enemy, and there was little emphasis on genuine community engagement. (Academy leadership has indicated that this incident involved a guest instructor who was subsequently admonished by APD).

Cadet Resources/Assistance. Most of the former cadets interviewed stated that there was no one to speak to about the problems they faced. When one cadet asked why he failed Defensive Tactics, he received no response. He heard indirectly that one had to take a certain number of hits to pass. Kroll notes that the inability of cadets to ask questions or challenge an action taken against them is consistent with the findings noted in the Racial Inequities and Analysis report of Joyce James Consulting, LLC (2020).

Training Academy Equipment/Facilities. In general, the former cadets interviewed did not feel that the equipment or facilities were biased toward one gender or race. However, one cadet stated *"There was a lot of waiting for bathroom breaks and the person in the bathroom had to be fast. There was not enough time to take off the equipment and go to the restroom; not enough privacy to change clothes – we had to change next to a car in the parking lot. If carpooled, you would be next to several people, men and women. Half-naked next to each other next to vehicles."*

Separations/Resignations. All the former cadets interviewed believed they were essentially coerced into resigning because they were expressly told that, if they did not "voluntarily" resign, they would be involuntarily dismissed or terminated and could never work in law enforcement again. Although APD records indicate that one of these former cadets left "involuntarily" after he was badly injured during defensive tactics, he told Kroll that he eventually signed a form indicating he left voluntarily (it is unclear if this is a mistake in APD documentation).

[193] *Diversity*. Although the former cadets differed as to the degree of diversity within their respective classes, most reported that their class was more diverse when it started than at graduation, with graduating classes consisting of a higher proportion of white males than at the start of Academy. The instructors also lacked diversity in these cadet classes, with only one female and a small number of Hispanic instructors mixed among a large number of white male instructors.

Physical Training Experiences

Several former cadets interviewed, from both the 137th and 140th cadet classes, reported that Stress Reaction Training (SRT) and Defensive Tactics (DT) training was physically and emotionally abusive. The below summaries are approximate, or near-verbatim statements of these cadets as reflected in Kroll's notes of interviews:

A cadet from the 137th cadet class reported:

> *On day two, we were doing SRT (Stress Reaction Testing). The instructor yelled, "Anyone who is last [running] in getting back here will not get a drink of water." I pushed as hard as I could and hurt something in my leg. I thought I dislocated my hip, but I had sprained my hip muscle. He sent me to the ambulance; there were already two other cadets there who were dehydrated. They went to the hospital. One instructor followed them. I had an x-ray. The medical examiner told me, in front of the Academy instructor, I would need Physical Therapy to address the injury for at least 6 weeks. APD placed me on light duty. I was required to go to class at the Academy, but no physical training. I was on crutches.*
>
> *One instructor said, in a threatening manner, something to the effect, "Wait until you get back out there." I felt guilt and sadness that I could not participate. I also felt that the instructor was intimidating me about my return to imply it would be worse than I could imagine.*
>
> *Once I was back on regular duty, I was forced to do physical training immediately without any time after recovering from my injury to work back in training shape. I could not do it and ultimately passed out on day three of my return to full training.*
>
> *I was laying on the floor semi-conscious when I was surrounded by instructors and a sergeant. The sergeant said, "You can't catch up." I said, "I can". When I realized this was not just a head game, I said "Okay, I will leave." The sergeant said "good" and gave me the papers to sign and I was asked to leave.*

A cadet from the 140th cadet class, who resigned after the first SRT session, reported:

> *On the first day, in full uniform with boots and body armor, I fell behind in the first run. They said derogatory things about my weight. The cadets had to hold water bottles in t-position or overhead without moving for a period of time. They were repeating, "Why are you here? You are not going to make it so why don't you run to your car." They said I had my shoe untied and I was overweight. They had three water breaks in two hours and cadets were required to ask for water. They were prohibited from touching anyone during the drill, but I was grabbed three times [by instructors] during physical drills – I did not find it helpful. I was pulled out of the group and told to face the group. I saw people in heat distress. That is when I decided I had to get out. I did not feel like they were attending to cadets in distress or caring to see if everyone was ok. Ambulances were on the premises but too far away. It was hot, it was dangerous.*
>
> *After we went from the fire tower back to the classroom, they asked if anyone wanted to leave. I left. Their own policy said you cannot do this drill more than 90 minutes, but they intended to do another 90 minutes. They are very nice to those who are getting ready to leave. "Are you ok? Do you need water?" At that moment we heard over the radio that "someone passed out." I heard several people (up to 9) had serious injuries, heatstroke, etc. that first day.*

I felt there was a lack of caring for the cadets.

A second cadet from the 140th cadet class reported:

> *At 2:30 pm on day one, they took us outside, fully clothed in full uniform with water bottles. We went to the track. The instructors said, "We will do pushups and squats." A lot of yelling and directing (you cannot drink unless we tell you to). Run from one spot to the next and do pushups and squats. Stand and hold water bottles in both hands at a certain height and do not move. More running (and in boots). "No looking at each other, no checking on each other, no talking to each other."*
>
> *Run again. Run again. We went to the Concrete Fire Burn Building. More squats, pushups, continued yelling. Some personal insults toward women's physical fitness. Called out one male using derogatory comments about him failing a previous class. Embarrassing specific cadets. Then we had to climb the tower stairs.*
>
> *The instructors got a brush truck and started spraying the cadets with water. It is not painful, but it was just embarrassing. Then, we had to run back to the classroom at around 4:30 exhausted and soaking wet.*

Two former cadets from the 140th cadet class, one male and one female, remained in the Academy through a portion of DT training, which was informally referred to as "Combat Training" and "Fight Day." This aspect of DT training occurred without any explanation or preparation. The below accounts were reported to Kroll with strong displays of emotion by the cadets we spoke with.

A female cadet from the 140th cadet class reported:

> *First day of defensive tactics, two people at a time were told to run around the track two times, then perform exercises like sit-ups and pushups until exhaustion, then go to the gym/ring, put on boxing gear and be ready to hit the instructors; we were specifically told to "hit the instructors, but not below the belt." There was no pre-drill preparation or training. When in the ring, I got hit by the instructor multiple times, and then was hit hard enough so I flew out the ring. I was told, "You must get back in the ring and keep fighting." I received a labral tear. I was told I was "small" and would have to just deal with it. I did not resign until firearm instruction, because during firearm instruction I had eye inflammation, an abdominal strain, and the labral tear, so shooting hurt more than I could bear. So, I resigned.*

A male cadet from the 140th cadet class reported:

> *During DT week, I was very nervous because cadets already did not look "right" to me. One cadet had a bloody bruise on the inside of his thigh, another cadet had an injury, but people were not allowed to discuss DT. I had no professional training to fight. DT was going to be held in a separate building. The cadets waited for an hour. The Instructor came in and looked everyone over. The instructor said, "We are going to see who can fight and can't. Put your handgrips on and get your bags ready." Then, two additional officers came in. They said this is your last chance to use the restroom. The cadets were told to line up against the wall. I did not even know how to wrap my hands; I did the best I could. They then put us in groups by size. We ran across the track multiple times. Then we separated into groups and were told to do exercises, pushups, sit-ups; if you looked like you were slacking, you were told to do more. They played loud music. The instructors called us into the gym to put on headgear and a mouthguard. There were "three makeshift boxing rings."*

The instructors told the cadets to hit a static object (heavy bag?). An instructor told me to hit the object harder. A plainclothes officer told me to go into the ring right now. The instructors were hollering and cursing at me. The instructor said, "No headshots, no groin shots." No questions were permitted. I went into the ring and into my corner. Then the [tall] officer started taunting me – "You gonna hit me, you gonna hit me?" The instructor hit me "with such force that my mouthguard almost fell out, I was trying to get it back in, then I got hit so hard I fell out of the ring."

I was told to get on my feet and go to a room. I felt like I had been knocked out and I was confused. I was told to sit down and not to talk in a closet with an officer who was also in that closet. A second cadet was sitting next to me "with no color in his face and he was acting confused."

After this round in the ring, I was told to go back to the track and run. I only recall being yelled at and being given orders. I was then told to go back to the gym, put the gear back on and hit the static object, and then to get back in the ring. They also had a large video camera in my face the whole time. When I went back into the ring, I was told not to hit the instructor's groin or head. The officer hit me in the kidney.

At that point, I thought I failed DT. I heard screaming: "Don't quit, keep fighting." I was hit harder, and I lost my breath. I was put back in that small room, closet, and prohibited from talking. After about 15 minutes, an officer came in and asked me if I was ok, and said, "If you need to quit, quit now." The instructor said, "You almost made it." He said you can keep going including the track, the exercises, hitting the object and getting back in the ring. I did not want to quit so I repeated the cycle and got back in the ring. This last time, a different officer hit me. I heard a cracking sound, and I was again hit out of the ring. The instructor told me, "You can't make it and you don't deserve to be here." He said, "Go to the fucking wall" (and the f-word is used constantly). Two officers came in and instructed me to follow them. I was given no medical evaluation and no water. I grabbed my stomach and vomited into the trash can. I saw blood. Another officer came in and told me that I did not pass the exercise. I said, "No sir, I do not understand." The officer replied, "You will sign these papers. We are going to do this the easy way or the hard way. If you do not sign these papers, you will not come back here or work in any other police department anywhere. You are injured, you obviously cannot continue." I attempted to argue: "I passed everything, what did I fail? There is no objective, no training." The officer replied, "If you do not sign it, we will terminate you." I signed the resignation document. They escorted me out.

After I resigned, I went to the hospital. I was evaluated and it was determined I had soft tissue damage. Some APD officers came to my home to interview me later that day. My significant other refused them entry into our home. I later learned (through word of mouth), that cadets needed to be able to take a specific number of hits to pass DT; you had to have a certain amount of endurance; it was a rite of passage.

In addition, although Kroll did not interview him, another former APD cadet who attended the 140th cadet class, filed a lawsuit against the APD on September 8, 2020.[194] The lawsuit alleged that eight cadets became ill during SRT drills before the plaintiff, who was allegedly incoherent and unable to walk, required

[194] KXAN Staff, "Former Austin police cadet sues department after being hospitalized during training," *KXAN Austin*, September 2020, https://www.kxan.com/news/local/austin/former-austin-police-cadet-sues-department-after-being-hospitalized-during-training/. (Wise v. Manley, Case Number D-1-GN-20-004731. Filed: 9/8/2020).

medical attention. The complaint further alleged that several cadets required emergency treatment because of heat and hydration issues that were caused, in part, by instructors' refusal to permit cadets unrestricted access to water. The complaint alleged that the plaintiff spent 30 days in the hospital and amassed over $300,000 in medical expenses.

As the above statements and information suggest, the experiences of these former cadets paint a negative portrait of Academy culture and training that reflect poorly on how cadets were treated. The messages taught by such training tactics arguably bear little correlation to preparing cadets for policing as guardians of the community in a 21st century urban environment.

According to the former cadets interviewed, the physically abusive component of Academy training – at least in the 137th and 140th cadet classes – was excessive and led to many cadet injuries. As one cadet stated, *"The instructors had my future in their hands. Why didn't they teach self-defense tactics before they commenced beating on me? I know there is a limit on the amount of force that is acceptable in a training scenario and it was far exceeded."* The experiences of these cadets suggest that the physical and psychological abuse of SRT and DT exercises (leading to dehydration, exhaustion, muscle cramps/pulls, broken bones, injured soft tissue) was excessive and occurred before cadets were properly trained or prepared to participate in these intensive exercises. The lack of physical preparation, along with the inability of cadets to ask for help from peers and instructors when they were tired or hurting, led to a significant number of cadet injuries and, in many instances, permanent elimination from the Academy.

Kroll acknowledges that the above statements and information are limited to a half dozen or so former cadets and do not necessarily reflect the perceptions or experiences of many other cadets, successful and unsuccessful, who have graduated from the Academy during the past several years. Many APD officers we have interviewed over the past few months believe that the manner in which the Academy prepares cadets is necessary, and that the allegedly abusive practices noted above are essential to preparing cadets for contending with what can at times be a dangerous and pressure-filled job. These officers contend that, without an element of physical and psychological stress applied during training, officers will be unprepared for the many and varied stressful encounters they will inevitably confront, at the risk of public safety and officer safety. While some of the interviews confirmed aspects of SRT and Fight Day as described by the former cadets, others offered variations in the programs and described them as less abusive.

Academy Culture as Described by Recent Graduates. Kroll also interviewed four cadets[195] who went through the 143rd cadet class, which was greatly impacted by the COVID-19 pandemic. The Academy class was suspended on at least two occasions, as 83% of the cadets were at some point infected with COVID-19. This naturally caused heightened anxiety among cadets that training might be canceled, and partly as a result, Academy staff appeared to be particularly focused on retaining and graduating the cadets in that class.

Nevertheless, due to a combination of injuries, illness, and some failures, only 42 cadets (approximately 72%) of the original 58 candidates who entered the Academy graduated and, as noted above, at least two of those cadets will need to be recycled through the next Academy. Below is a summary of key topics explored during Kroll's interviews with these recently graduated cadets:

"Warrior" Culture. All the cadets/officers felt supported during the 143rd cadet class. They believed the Academy staff cared about their wellbeing and they perceived instructors as unbiased. However, one cadet said the instructors were inconsistent in their behavior and training, with some instructors acting like

[195] Kroll attempted to interview eight recent Academy graduates, though only four responded. Although all four of the cadets/officers interviewed were male, they were racially and ethnically diverse, and included one white, one Black, one Hispanic and one Asian officer.

mentors while others acted more military-like and formal. Moreover, some instructors appeared more engaged with the cadets than others.

According to one cadet, Academy instructors emphasized that, during potentially hostile encounters, it is important that cadets/officers learn to "fight and win." At no time was it suggested that potentially hostile encounters should result in a "win-win" with both the officer and citizen remaining unharmed.

Selective Ridicule. Although there was plenty of yelling, screaming, and cursing at cadets at various times during the Academy, these cadets did not perceive that any cadets were selectively ridiculed, and each responded differently to whatever harsh tactics were applied. Although some cadets were affected by it more than others, none of the officers felt that the screaming and cursing was excessive, and each believed it was to be expected in a police training academy.

Biased-based instruction. These cadets perceived the 143rd cadet class as diverse in terms of race, ethnicity, and gender, with no obvious drop-off among minorities or females upon graduation. However, one cadet felt there was insufficient Black representation in the class. None of these cadets perceived any instructor bias and each found their bias training informative, although one cadet noted that "it was a little confusing."

One cadet, who is now a sworn officer, perceived some anti-female bias among some of his cadet class and suggested that the selection process may not capture biases such as misogyny. He also thought that, in the Academy and in the field after graduation, Black police officers are sometimes held to a different standard (e.g., their mistakes are less likely to be overlooked as compared to white officers). While this cadet observed some peer biases, he did not feel it was substantial or widespread.

Community bias. Each of the graduating cadets said the Academy provided a balanced perspective on when to apply protective versus warrior styles in policing. These cadets said they learned a great deal about community relations and population subgroups, including the LGBQT+, Spanish-speaking, deaf, and mentally impaired communities. They believed the Academy taught the need to care for and understand the community, and to be equally fair towards all population subgroups. However, one newly sworn officer noted that, due to high call volumes, it is difficult to implement the community relations training they were provided at the Academy, due to lack of time.

Cadet Resources/Assistance. The cadets felt supported by Academy staff. For example, a Peer Support Sergeant spoke to the cadets several times and the Employee Assistance Program (EAP) staff spoke to their class during the first few days of the Academy. The cadets felt they could discuss their problems and that there were people to speak to if needed.

Physical Training. Some of the role plays were physically intense; one cadet described them as potentially excessive and "overly aggressive" and one cadet we interviewed was badly injured during the final role play. APD allowed this cadet to graduate and be assigned to light duty on the condition that, once cleared by medical staff, he would need to complete the final role play, which he subsequently failed. The cadet believed he failed because "he was forgotten about when on light duty assignment" and not physically rehabilitated to prepare him for the physicality of the final role play. Nevertheless, APD has since rehired this cadet, who will be recycled into the next Academy class.

Another cadet reported that Defensive Tactics exercises preceded any actual defensive skills training. He believed cadets should have received more skills training before DT, stating, "If you go to hitting a heavy bag without training, it will lead to broken hands and wrists." This cadet was injured during DT, although he acknowledged that he may have simply exacerbated a prior injury.

Use of Force Training. The 143rd cadet class included significant emphasis on emotional control, verbal and tactical de-escalation techniques, including Crisis Intervention Team (CIT) training and Integrating Communications Assessment and Tactics (ICAT), two modern approaches to use-of-force situations that are consistent with best practices. One cadet thought that more "hands-on" training might further reduce the likelihood of escalation in use-of-force situations on the street. When the cadets were asked if they received any instruction in the classroom or on the range concerning when it would be appropriate to point a firearm at a person, we received inconsistent responses (e.g., two cadets said they received "no training," although one said he may have heard something about a "fourth amendment seizure", while two cadets were not sure if this issue was ever covered).

5.2.2 Academy Culture Today

Paramilitary model. The Training Academy remains a predominantly paramilitary training model, albeit with a greater emphasis than in years past on a classroom-based, learning-institute style of teaching.

- Although most Academy leaders describe the Academy as a "hybrid" model closely associated with a paramilitary model but tampered with a mix of adult learning courses, the reports of Dr. Villanueva and Dr. Ferguson, and interviews of Academy supervisors and instructors, suggest the paramilitary model continues to predominate.
- Three frequently cited examples of the Academy's transition away from a paramilitary format include: First, the Academy has eliminated the requirement that cadets "make a hole" whenever an instructor or supervisor walks through the hallway (cadets were formerly required to stand at attention against the wall so that senior personnel could get through). Now, cadets are encouraged to extend a handshake, introduce themselves, and engage in conversation. Second, cadets are no longer required to wear camouflage, military-style attire as the uniform of the day in Academy. Third, there are fewer one-on-one, in-your-face stress actions (yelling and screaming), which are now more group focused.
- Cadet surveys administered by Dr. Ferguson after the 141st and 142nd cadet classes suggested that most courses continue to be taught in a highly formalistic and stress-based manner, with cadets yelled at, berated, and degraded by instructors in certain classes. Moreover, according to Academy instructors and supervisors with whom Kroll spoke, the Academy has continued to impose behavioral modification exercises (i.e., group calisthenics and exercise drills at the sandpit) as collective discipline for cadet mistakes and compliance failures.
- The report of the Community Video Review Panel (CVRP), released on January 18, 2021, also highlighted concerns regarding the Academy's culture as reflected in many of the Academy's training videos. A few of these concerns are highlighted in the below excerpts:

  > *The us-versus-them bias was explicit in some of the videos--i.e. police work is "the deadly game of cops and robbers"; however, much of it was implicit. This bias manifested in the following ways:*
  >
  > - *An enhanced focus on officer safety over the safety of the community as a whole,*
  > - *A "warrior" versus "service" mentality in which officers see themselves as the "good guys" and the public they interact with often as "bad guys,"*
  > - *An emphasis on a kind of impossible objectivity and "professionalism" in which officers are expected not to have or show emotions and to view emotions from members of the public as problematic, and*

- *Most importantly, a view of the profession as primarily concerned with exercising and maintaining control, where officers are the agents of control and the public stands in need of being controlled.*

. . . .

We also observed evidence of the growing militarization of policing in the videos. The significant number of military veterans serving as police officers has influenced police/community relations in ways evident in the training videos. Many police organizations actively propagate the idea that our cities are a kind of "war zone" rather than communities in which (mostly diminishing rates of) crime takes place, and the public contains a significant number of "bad actors" which must be treated as enemy combatants rather than citizens with shared rights. Such a dramatic and important shift only exacerbates the us/them dichotomy.[196]

APD's Rationale. APD leadership has expressed its belief to Kroll that some aspects of a paramilitary structure are an essential component of police culture and paramount to ensuring cadets are attuned to the chain of command and know what to do and how to respond in crisis situations. Indeed, the majority of APD and Academy leadership we spoke with questioned the suggestion in Dr. Villanueva's report that paramilitary academies do not align well with the principles of community policing and problem solving and contribute to a "warrior" mindset, which leads to an "us vs. them" mentality of officers on the front lines fighting crime. Academy leadership and instructors we spoke with presented the view that, while it is important to emphasize the community-oriented skills of policing, the Academy must nevertheless instill in cadets the importance of following a strict chain of command and following orders in crisis situations. They further contend that this frequently requires the imposition of physical and psychological stress so that cadets are not faced with such high-stress situations for the first time while on the streets as sworn officers.

We agree that police officers can find themselves in life-threatening situations at a moment's notice and need to deploy swiftly and effectively to address a threat in the community. Human beings often like to take their time and weigh options and outcomes before acting. Police work sometimes does not give officers that opportunity. There are times when orders need to be communicated clearly and quickly about how to respond.

That said, a Gallup poll in the summer of 2020 reported that confidence in the police had fallen to 48 percent, which was the first time in the 27 years Gallup has tracked this issue that such a low level of public confidence in policing was recorded.[197] Clearly, the customers of policing are unhappy with the product police departments are selling; reforms are needed. If one thing is certain, it is that the community does not want a paramilitary training academy or a police department that employs stress-based, military-like tactics unless absolutely necessary.

There is a need to train officers for the job and tasks they will be required to perform. The majority of those tasks involve using empathy, tact, discretion, and integrity when communicating with citizens. Training that prepares officers for the limited number of outcomes that require them to utilize legitimately required military-like tactics, such as apprehending a terrorist bomber or addressing a sniper situation, should not dictate the foundation of a department's training program. Although Kroll believes in training officers to deal with real-world threats, which can include exercises that elevate a cadet's heart rate and induce the physical effects of being placed in fear and under stress, it is equally important to train officers for their everyday responsibilities and duties.

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[196] "Community Report: Austin City Council Resolution 66: Austin Police Department Training Video Review Panel" (January 18, 2021).

[197] Aimee Ortiz, "Confidence in Police is as Record Low, Gallup Survey Finds," *The New York Times,* August 2020, https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html

As noted in Section 4, police academies can establish a resiliency-based or guardian-centric culture which focuses on service to the community, while still preparing officers to effectively react and respond to crisis situations. As opposed to stress-based training, however, resiliency-based training has been shown to have several positive outcomes for trainees, including reductions in officer stress, negative emotions, and depression.[198] Strengthening cadets' critical decision-making skills, communication, and emotional intelligence skills is better associated with the skills and tactics necessary to handle the complex situations they are likely to face in the field. It is Kroll's opinion that this can occur without a paramilitary foundation.

"Warrior" vs. "Guardian". Although APD leadership dislikes the "warrior vs. guardian" terminology, the new Commander of the Academy said she believes APD should train its cadets to be "70% guardians and 30% warriors." "We are guardians, but we have to maintain a warrior mindset to stop immediate threats when they occur."

- As an example, the Commander suggested to consider an officer assigned to protect school children. The officer is there as a guardian, but if a school shooting occurs, the officer needs to be prepared to respond immediately, sometimes with military-style tactics pursuant to strict protocols and clear lines of authority. Although hopefully these tactics are rarely employed, officers need to be prepared to employ and execute such tactics in crisis situations, which can only be taught at the Academy.
- Other real-life examples include the attempted insurrection at the United States Capitol building on January 6, 2021. In situations like that, clear lines of authority are essential to ensure a safe and effective response to threats posed by violent mobs and criminals. As it happened, the U.S. Capitol Police as a unit was initially unprepared for the insurrectionary mob that charged the Capitol building that day. As a result, the chain of command broke down, resulting in the death of one officer and approximately 130 injuries.
- By contrast, on April 15, 2013, officers in Boston did not delay and deliberate over their response to the terrorist attack that occurred during the Boston Marathon. Command was quickly established, directions and orders were followed, and officers were deployed pursuant to a strict command structure. At a moment's notice, officers had to resort to tactics and procedures learned during their reality-based training exercises at the police academy, thereby saving dozens of lives.

The mere use of the terms "warrior" and "guardian" has led to increased tensions in policing. Community activists point to officers in tactical vehicles and SWAT uniforms performing tactical operations in an unnecessarily "militaristic" fashion. This criticism is justified when police departments deploy heavy-handed equipment and tactics unnecessarily, such as when SWAT teams execute no-knock search warrants for low-level offenders, or when the police arrive in full tactical gear to peaceful protests. Such aggressive tactics are overbearing and establish an unfortunate tone that police are looking for a confrontation. This dynamic in policing was first flagged as a potential concern as early as 1997, when a survey of all police departments serving cities of 50,000 people or more provided the first comprehensive national data on SWAT team deployments. Their findings documented a rise in the number of SWAT teams and the normalization of these units into mainstream policing.[199]

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[198] Rollin McCraty and Mike Atkinson, "Resilience Training Program Reduces Physiological and Psychological Stress in Police Officers," *Global Advances in Health and Medicine*, 1, no. 5 (2012): pp. 44-66.

[199] Peter B. Kraska and Victor B. Kappeler, "Militarizing American Police: The Rise and Normalization of Paramilitary Units," *Social Problems*, 44, No. 1 (1997): pp. 1-18, https://www.jstor.org/stable/3096870?seq=1.

Police departments counter that policing requires discipline, clear lines of authority, and asperity in dynamic and tense situations. Most officers do not agree with the perception that donning protective equipment and approaching potential life-threatening situations in vehicles designed to give them the best chance of protecting themselves, while ending a threat to the community quickly, is indicative of them waging war in the communities they serve. Certainly, no one would suggest that using an armored vehicle to approach the Austin bombing suspect was an unnecessary deployment of equipment. But the manner in which APD responded to summer protests in 2020 contributed to community perceptions of a tone-deaf department not responsive to community concerns.

In our conversations with APD personnel and the community, Kroll has found that both groups agree that officers should be professional caretakers—protecting people and serving the community respectfully and professionally. There is also agreement that, when faced with a dangerous situation in which officers are subjected to fear, anxiety, stress, and potential violence, officers must regulate their responses, apply a guardian-centric, resilient approach, and ensure that citizen interactions are conducted without bias.

Regardless of what terminology is employed, a department's training programs should be assessed on whether they prepare cadets in a resilience-based rather than stress-based approach to policing in an effort to develop resilient caretakers.

Elimination of Abusive Practices. Following the 141st cadet class, as a result of complaints from cadets and a series of cadet injuries that had occurred in several of the previous Academy classes, the Academy modified practices, such as "Fight Day" and Stress Reaction Testing (SRT), that had been deemed unnecessarily abusive. These modifications were made in an attempt to reduce cadet injuries, lower the rate of attrition (which disproportionately impacted females and cadets of color), and create an environment more conducive to success and graduation.

- "Fight Day" (subsequently "Will-to-Win") is part of defensive tactics training. Cadets initially run a lap around the track, after which they perform pushups and flutter kicks for approximately 4-5 minutes until called into the gymnasium, where they are required to jump rope. Cadets then don headgear and boxing gloves and punch a heavy bag for approximately two minutes. Three cadets are then selected to enter one of three boxing rings, where they each fight with a skilled and experienced instructor, who delivers a series of blows and punches at 40-50% intensity. The cadet is expected to fight continuously for three minutes and to perform through pain and exhaustion while continuing to fight. If the cadet stops fighting, the instructor continues to throw 40-50% intensity punches back at the cadet to encourage the cadet to fight back. Frequently, cadets have had no formal self-defense or hand-to-hand encounter training prior to this exercise.
- "SRT" or Stress Reaction Testing was modeled on military boot-stamp training and constituted a series of intense physical exercises combined with persistent yelling and screaming that occurred on day one or two of Academy and pushed cadets to their physical and psychological limits to see how they acted under extreme stress. The intent was to break down individual personalities and rebuild them as a unified team. This frequently resulted in several cadets dropping out and appeared to operate as a sort of hazing ritual to force out cadets who "could not take it."
- Following the 141st Academy class, "Fight Day" was changed to "Will-to-Win" and became more structured and controlled than in years past. However, although the name has changed, the essence of the exercise has not materially changed. It occurs prior to cadets being taught any self-defense or other hand-to-hand defensive tactics, which places them at a distinct, and arguably unrealistic disadvantage against skilled and experienced sparring instructors.

- APD believes it is essential that cadets who have not experienced being physically assaulted or punched before arriving at the Academy should experience this for the first time in an Academy-controlled environment, and not in a hostile situation while on patrol after graduation.
- Kroll notes, however, that APD personnel were unable to provide a persuasive rationale as to why such an exercise could not reasonably occur towards the end of Academy after cadets have received all essential defensive tactics training.[200]

- Two male staff members (an instructor and a supervisor) who were the most abusive during "Fight Day" (prior to the 142nd Academy class), especially to female cadets, have been removed from the Academy and replaced with more appropriate instructors. The Learned Skills Unit now has a highly regarded (within APD) female sergeant and African American corporal in supervisory roles.
- The Academy has eliminated SRT, which frequently resulted in injuries, dehydration, and forced resignations. Because Academy leadership determined that cadets were not being provided the tools to succeed and must be allowed to build physical capacity gradually, SRT was replaced with team-building exercises (TBX).
  - According to the lesson plan, the goal of TBX is "to create a physically and mentally stressful environment through exercise and problem solving," which "will serve as an important introduction to the importance of teamwork and the need for strong leadership in law enforcement" consistent with the "philosophy, values, vision, and mission of the Austin Police Department."
  - TBX occurs later in the Academy, which allows time to have cadets enhance their physical fitness levels before completing the team-building exercises. Although cadets are still placed under physical and psychological pressure to finish the tasks, TBX is a much-improved way to create the skills needed of officers to react under pressure while unifying individual personalities into a team without the humiliation and other components of military boot-camp training.
- The Academy has also eliminated a steep hill climb that was used for SRT and disciplinary purposes and which caused a lot of ankle injuries. This has been replaced by modified discipline that requires cadets to carry a 15 or 20-pound sandbag to classes for a day if they fail an exercise, as well as collective discipline (behavioral modification exercises) in which all cadets perform extra physical fitness drills when any one cadet fails (this occurs in the first trimester of the Academy as a way of demonstrating that one officer's mistake affects all officers).[201]

Officer Wellness. The Academy has attempted to provide transparent and effective support mechanisms for its cadets through several wellness-related services, including the following:

- In the first week of the Academy, Director of Officer Wellness, Rick Randall, provides overall information on the officer wellness programs.

[200] In interviews with civilians who had accompanied APD officers on ride-alongs, it was noted that one officer commented that, if a physical conflict were to occur, he was going to "win" the encounter. Statements such as these give the impression of a "warrior" mindset among APD patrol officers.

[201] These collective discipline sessions are sometimes referred to as "smoke sessions."

- At orientation, the Police Chief speaks about the importance of self-help and how to access department wellness services; the Commander gives the same information to family members who attend the academy orientation session with their loved ones.
- During weekly staff meetings, Academy leadership reviews the cadets' progress in major areas of academics, physical training, learned skills, and emotional well-being.
- In several documented instances, staff members have referred cadets experiencing coping issues, mental stress, or distress during the Academy to psychological services and the peer support unit.

5.3 Teaching Methods / Adult Learning

Adult Learning Methods. The reports completed by Dr. Villanueva in May 2020 and Dr. Ferguson in April 2021 affirmed the need for the Academy to better develop and incorporate adult learning theories into its curriculum and teaching methods and to move away from the rigid, formalistic, lecture-and-listen format that dominates many Academy classroom courses.[202]

- Although Academy instructors have been revising course content and lesson plans in preparation for the 144th cadet class, and submitting such content for supervisory review, until recently the primary focus has been on ensuring that all course content is compliant with the state-mandated Texas Commission on Law Enforcement (TCOLE) and Basic Peace Officer Certification (BPOC) requirements. Course revisions and updates were not directed at incorporating adult learning and other effective teaching strategies. Academy staff was awaiting guidance from Dr. Villanueva's replacement (see below).

Hiring of New Division Manager. On March 15, 2021, the Academy officially hired and onboarded Dr. Anne Kringen to replace Dr. Villanueva in her role as Organizational Development and Training Manager. Dr. Kringen most recently was Associate Professor of Criminal Justice at the University of New Haven. A police officer before she pursued her Ph.D. in Criminal Justice at Texas State University, her research interests are in Policing, Gender in the Criminal Justice System, Organizational Policy, and Criminal Justice Administration. In her published writings, Dr. Kringen has explored such topics as mental illness stigma and the limitations of crisis intervention, gender imbalances in policing, learning community policing through community engagement, the role of Civil Service Commissions on police diversity, and identifying barriers to Black applicants in police employment screening, among other topics.

- Dr. Kringen's official position at the Academy is Division Manager. On March 30, 2021, Interim Chief Joseph Chacon spoke with Academy staff and instructed them that Dr. Kringen has the same authority as Commander and that her instructions and recommendations must be complied with moving forward.
- One of Dr. Kringen's top priorities is to immediately work with instructors to ensure that (1) all lesson plans are updated, (2) content is current and corresponds appropriately to the objectives of the course, and (3) that adult learning and innovative teaching techniques are incorporated throughout Academy training.

[202] Dr. Ferguson's report specifically focused on course content for the following courses: Cultural Diversity, History of Policing, Professionalism and Ethics, Fair and Impartial Policing, Services for the Deaf and Hearing Impaired, Multiculturalism and Human Relations, Spanish, Transgender, LGBTQ, and Racial Profiling.

- On April 1, 2021, Dr. Kringen provided Kroll with an outline of her plan to work with instructors to update all course content consistent with the above three criteria. Once the content is sufficiently updated, she will review at least two lesson plans for each instructor to provide feedback and direction on conducting Phase Two reviews, which will ensure that:
    - Each lesson plan includes diversity, equity, and inclusion (DEI) content. Lesson plans that do not relate to DEI content must be verified by staff identified by the Division Manager.
    - Each lesson plan includes graphs or infographics that present ideas visually.
    - All PowerPoints comport to Ratcliffe's PowerPoint guidelines.[203]
    - Any material removed from PowerPoints is incorporated into handouts to be made available to cadets weekly, and that information included in both the handouts and the PowerPoints are consistent.
    - Each lesson plan includes assessments (graded or ungraded) for each learning objective.
    - Each lesson plan includes endnotes for content used to fulfill each learning objective (for each section) so content can be checked for accuracy and older content that should be updated can be identified easily. All TCOLE content is to be identified to indicate which content areas cannot be modified or deleted.
    - Each lesson plan includes at least one current event or local example that is relevant to each unit goal.
- Dr. Kringen will also be exploring Academy culture and helping to find the proper balance between academic-style learning, physical and tactical training, disciplinary measures, and chain-of-command structures.

Teaching Seminars. A majority of Academy instructors and supervisors attended two teaching seminars towards the end of 2020 that addressed how to more effectively present course content and teach in ways that enhance learning. In particular, Academy instructors and supervisors attended:

- A teaching symposium in December (co-led by Drs. Ferguson, Villanueva, and Sloan) that provided additional guidance on adult learning methods as applied to courses related to diversity, equity, and inclusion;[204] and
- A Transformational Training seminar led by a team of instructors at Command Presence (https://commandpresence.net/), a police instructional training firm. The 8-hour seminar provided ideas and methods for evidence-based teaching methods designed to counteract "death by Power Point" and other uninspiring teaching techniques. This was well-received by Academy staff, and the Academy plans to require this training annually for all Instructors.

Role Plays and Scenario-based Content. Academy instructors with whom Kroll spoke noted that many Academy courses already include a lot of scenario-based and role play content that effectively teaches cadets how to apply what they are learning. For example, de-escalation, criminal law, and critical incident training each include several role-play scenarios. Critical incident training examines scenarios involving bipolar disorders, emotional depression, intellectual disabilities, and paranoia and hypervigilance. De-escalation training, including verbal de-escalation techniques, as well as criminal law training, applies role

[203] https://www.jratcliffe.net/post/ten-basic-tips-for-powerpoint-presentations.

[204] According to Dr. Ferguson, although many instructors expressed openness to further transitioning to an adult learning environment, the feedback from the symposium was disappointing (survey results were mixed with only nine surveys completed).

plays to scenarios involving family disturbances, the "button pusher," an irate person in a civil dispute, the agitated driver, the passenger who tries to interfere with a driver arrest, and several others.

- While role playing is an important active learning technique, adult learning concepts involve more than simple role playing. The importance of updating the curriculum to incorporate modern and effective teaching methods that include open discussion, critical thinking, and active learning techniques is essential to overcome the passive lecture and listen techniques that have dominated a lot of Academy instruction in classroom-based classes.

Updated Instructor Job Descriptions. At the recommendation of Dr. Villanueva, the Academy recently revised Academy Instructor job descriptions to include appropriate expectations, duties, and responsibilities around teaching effectiveness. The revised job descriptions set forth the duties and responsibilities of Cadet Training and Learned Skills instructors, as well as Assistant Field Training Officers, including the need to model "professional behavior and communication," exhibit "appropriate behavior, language, demeanor, and dress," utilize "procedural justice practices, such as treating citizens with respect and decision making based on facts instead of biases, to achieve and maintain effective community policing," and maintain an "appropriate and professional classroom atmosphere and training environment to engage students and facilitate learning."

- The job descriptions have also tailored a comprehensive list of knowledge, skills, and abilities that each instructor must have to teach at the Academy, including the following:
    - Interest and commitment to teaching and learning
    - Knowledge of teaching strategies
    - Knowledge of adult learning theory
    - Ability to use a variety of instructional techniques, including lecture, assigned reading, group and individual assignments, conferences, debates, discussion groups, panels and seminars, simulations, case studies, and role play
    - Ability to communicate in ways that display empathy and understanding with other city employees and members of the community
    - Ability to apply emotional intelligence skills to understand and collaborate with members of the community to improve public safety, resolve issues, and build trusting relationships
    - Knowledge of effective community policing strategies and practices
    - Knowledge of the diverse cultural groups that make up Austin, Texas, and their unique concerns when it comes to law enforcement
    - Knowledge of appropriate techniques for deescalating situations and contacts
    - Skill in establishing and maintaining effective working relationships with the diverse cultural and social groups in Austin, Texas
    - Skill in appropriately utilizing listening and verbal abilities to maintain professionalism during difficult interactions with law enforcement

Scheduling in 40-hour blocks. The schedule for the 144th cadet class initially included large blocks of time devoted to such courses as Penal Code (40 hours in Week 3), Arrest Search and Seizure (40 hours in Week 5), and Traffic Code/Crash Investigation (40 hours in Week 7), which requires instructors (often the same instructor) to teach non-stop for much of that time, and cadets to absorb a huge amount of

information in a condensed period of time. Instructors lose some of their ability to effectively communicate as the time goes by. Cadets receive a large amount of new and technical information without time to effectively digest it. If they have concerns and need additional follow-up, there is no time to do so the next day or after class, as each day has a full load of new material to be presented.

Spreading out the courses with more frequent test taking could better enable cadets to learn from their mistakes and correct them when tested again on that information. Some students are sound oriented with the ability to hear an instructor present a lecture and retain it. Others are visually oriented and need to read the text, see videos, take notes, and review the learning to absorb the information. Large chunks of information are better distributed in shorter periods for a longer length of time. This would also provide instructors the ability to better address how the course fits into the overall mission of ethical policing and allow for more discussion by gradually building onto the foundation of the previous instruction.

An example could be learning in the morning session the law on when an officer can make a threshold inquiry pursuant to *Terry v. Ohio* based on reasonable suspicion. The next class could instruct recruits on how tactically to make such an approach along with when officers can conduct a frisk and when they cannot. This could be followed up with the rules and procedures of reporting a stop, coupled with appropriate report writing skills. Each instructor could build off the other. It would allow each instructor to weave in class discussions about professionalism, ethics, and integrity, and help ensure training is consistent with department and community values.

We understand that police training in the state of Texas comes under the purview of the Texas Commission on Law Enforcement (TCOLE), which sets the required minimum training an academy must cover so that cadets are eligible to take the state certification exam upon graduation. TCOLE recommends not only how the information should be presented and sets learning objectives for each course of instruction, but also recommends the sequence in which the course material should be taught. However, TCOLE allows academies to change the sequence, if necessary.

Kroll Interviewed the TCOLE leadership team, which explained that they recommend the order of instruction based on past success of that curriculum in preparing cadets to pass the TCOLE exam on their first attempt. When Kroll informed TCOLE of our suggestions for modifying the 40-hour blocks of course content at the Academy, TCOLE said it would have no concerns with changing the strict sequencing of instruction, but believed to effectively do so, some of the courses may require more time to present. TCOLE noted that, while it would need to make sure the manner of the presentation continued to meet all the course learning objectives, its evaluation of the Academy would continue to depend on the Academy's first-time pass rates on the state certification exam.

Use of Outside Content Experts. Kroll found that APD has historically been reluctant to incorporate a lot of community and civilian input into its training programs and many Academy instructors and supervisors are somewhat distrustful of non-police personnel (including academic experts) when it comes to advising on training methods. However, Academy leadership has expressed a willingness to work with outside academic content experts from local colleges and universities in appropriate courses, such as the History of Police and Race in America (see discussion below). Moreover, the new Division Manager is currently reviewing course content and meeting with instructors to determine which courses—particularly DEI-related courses—are most appropriate to be co-taught with an outside subject-matter expert. This will also be a consideration of the newly formed Academy Curriculum Review Committee, discussed below.

Academy Curriculum Review Committee. One of the initial priorities of Dr. Kringen as the new Division Manager is to establish an Academy Curriculum Review Committee (Committee), which will help evaluate the content of each DEI-related course at the Academy and determine, among other things, which courses

may benefit from subject-matter experts and other outside perspectives. The Committee will be comprised of Dr. Kringen (Division Manager), the Training Supervisor (once hired), selected members of Academy staff, two outside academic experts, and four community representatives. The staff members will include, in addition to Dr. Kringen and the new Training Supervisor, at least two instructors with specific knowledge of some of the key courses to be evaluated. The Committee will start by examining course content for the DEI-related courses of most concern to the community, as well as some of the Learned Skills content to ensure that DEI objectives are incorporated throughout the entire Academy training process.

Learning Management System. Academy leadership is currently in the process of selecting and purchasing an automated Learning Management System (LMS) to help facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure compliance with state-mandated TCOLE- and BPOC-requirements, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work, and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class. Once implemented, the LMS software will allow Academy staff to have a state-of-the-art, best-in-class curriculum planning tool.

- Kroll notes that APD is in the process of finalizing the selection of a vendor and procurement of such a system, with final implementation planned for October 2021.

5.4 Cultural Competency Training / DEI Content

Curriculum Review. Kroll examined the lesson plans, curricula, and teaching materials provided by Academy staff for each of the courses which broadly address issues pertaining to diversity, equity, and inclusion (DEI), as well as police-community relations and other matters that, broadly speaking, address cultural competency. Specifically, Kroll conducted a gap analysis of the below courses:

1. The History of Police and Race in America (newly added course)
2. The History of Policing (conventional course)
3. Cultural Diversity
4. Professionalism and Ethics
5. Fair and Impartial Policing
6. Multiculturalism and Human Relations
7. Interacting with Transgender Individuals
8. Law Enforcement and the LBGTQ+ Community
9. Racial Profiling (Biased Based Policing)
10. Law Enforcement Survival Spanish
11. Interacting with Individuals who are Deaf or Hard of Hearing
12. Traumatic and Acquired Brain Injuries

We also reviewed and considered the curriculum review report of Dr. Miguel Ferguson that was finalized and submitted on April 5, 2021. Kroll agrees with Dr. Ferguson's Level I and II recommendations, which have essentially been incorporated into our recommendations in Section 7.[205] Moreover, consistent with Dr. Ferguson's recommendations to incorporate more adult learning content throughout Academy training,

[205] Dr. Ferguson's Level III and IV recommendations are for the City's and APD's long-term considerations.

Kroll recommended as a short-term measure in our preliminary report of February 26, 2021, that the City of Austin immediately hire a replacement for the Organizational Development and Training Manager position to assist Academy staff in implementing and incorporating adult/active learning models throughout the identified DEI-related courses. The Academy filled this position on March 15, 2021, with the hiring of the Division Manager.

We provide a brief description and analysis of the DEI-related and cultural competency courses below.

The History of Police and Race in America

In an effort to provide historical context to community perceptions of the APD and policing generally, the Office of Police Oversight collaborated with the University of Texas School of Law to develop *The History of Police and Race in America,* an eight hour course that will be taught for the first time at the Academy during the 144th cadet class. The course was submitted to then-Chief Manley in March 2020 and subsequently endorsed by Dr. Villanueva, who believed that including the course in Academy training would ensure that "diverse perspectives are being presented when learning about police history in context."[206]

By tracing the history of policing from its colonial origins to modern times, the course illustrates how police agencies have historically subjugated racial and ethnic minorities in the United States, with a specific lens directed at Austin. The course curriculum is designed to inform cadets about the historical forces underlying modern perceptions of the police among communities of color, as well as help cadets better understand and empathize with the diverse communities they are called to serve.

The course is organized into five parts. First, students are asked to reflect on their own views of policing by exploring how their lived experiences and personal interactions with the police have shaped their views of policing. By noting these experiences on a handout and sharing them in small groups, students learn of the many ways in which views about policing become fixed in people's minds, and that such views differ depending upon one's experiences. Second, students participate in a short competitive activity in which one group is given a significant advantage over other groups. At the end of the activity, instructors explore with the students how it feels to compete with unequal resources. Third, instructors present a PowerPoint on the history of police in America, drawing a direct line between colonial slave patrols and mass incarceration today. The presentation examines the racist origins of formalized police departments in the United States generally and Texas specifically, and discusses the violence and injustice historically perpetrated against minorities, police involvement in lynching, the aggressive enforcement of Jim Crow Era Laws, and the over-incarceration of people of color. Cadets are exposed to the historical realities that influence how some community members continue to perceive the police today. Fourth, students are asked to actively engage with specific flash points that have created tensions between APD and the Austin community from post-reconstruction to modern times. Reading about these cases and answering critical questions pushes students to emotionally engage with and understand the troubling and violent role that the police played in each of these flash points. Finally, students are asked to reflect on the course by writing their thoughts and engaging in conversations about how they can use this information to change the narrative of policing moving forward.

Kroll believes that this course, which will be co-taught by a local academic subject matter expert[207] and an African American APD sergeant, and which fully embraces adult learning methods, is a valuable and

[206] APD Academy Review and Strategic Plan by Dr. Sara Villanueva (May 2020).

[207] At present, the Academy is in discussions with Dr. Courtney Robinson, an Adjunct Professor at Huston-Tillotson University and the Founder of the Excellence and Advancement Foundation in Austin, to co-teach this course. The Foundation uses innovative programming to address critical community needs and works to transform how communities combat the school to prison pipeline.

important addition to the Academy's curriculum that will help counter the perception that law enforcement is reluctant to address difficult and troubling facts about its past. By understanding the history that impacts community perceptions, cadets will be better prepared to deal with the complex realities of policing in a diverse urban environment, while better understanding how their presence and authority is sometimes perceived.

The History of Policing

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan for this course was last updated and approved by an Academy supervisor on October 30, 2019.

This course covers the historical development of police service models in the United States from 1900 through the present, including how the English system of law enforcement influenced policing in the United States. Students also learn about the evolution of policing in Texas.

Students learn that community policing is an APD organizational strategy that allows the police and community to work closely together to solve the problems of crime, including fear of crime, physical and social disorder, and neighborhood decay. Students also learn that community policing stresses exploring new ways to protect and enhance the lives of those who are most vulnerable: juveniles, the elderly, minorities, the poor, the disabled, and the homeless. This effort encourages the police and law-abiding people to work together with mutual respect and accountability.

The course also covers how APD currently engages the community through calls for service, directed patrols in high crime areas, addressing community quality-of-life issues (e.g., littering, excessive speeding areas, prostitution, etc.), the use of District Representatives that work exclusively in their assigned communities, Operation Blue Wave (community foot patrols), and such initiatives as "Coffee with a Cop."

Although the course content is fine for what it attempts to do, it should not be considered part of the overall DEI content of the Academy, as there is little emphasis in this course on issues pertaining to equity, race, ethnicity, and other DEI content. Those areas are more adequately covered in the above-noted course on History of Police and Race in America.

Dr. Ferguson has recommended that APD update the curriculum for this course and use content experts in its development. However, much of the updated content referenced by Dr. Ferguson is covered in The History of Police and Race in America (see above), which will be co-taught by a local subject matter expert. That course was prepared and developed by content experts at the University of Texas Law School. Accordingly, the History of Police and Race in America, which complies fully with Dr. Ferguson's recommendations, should replace the History of Policing as DEI-related training. The History of Policing can be taught as a traditional training course outside of the core DEI courses.

Cultural Diversity

This class is taught by a TCOLE-certified instructor and is scheduled for eight hours. The lesson plan was approved by an Academy supervisor on October 30, 2019. The previous lesson plan was prepared on July 7, 2010, and last revised on August 14, 2013 (according to APD documentation, there is no indication that this earlier lesson plan was reviewed and approved by an appropriate Academy supervisor). Although the current lesson plan contains some revisions and reformatting, it is otherwise nearly identical, based upon a side-by-side review with the 2013 version.

The purpose of this training is to increase cultural awareness and understanding and help cadets develop skills that will refine positive communication within a diverse community.

Kroll notes that the current lesson plan is not substantially different than the outdated version. For example, as with the lesson plan revised in 2013, the current lesson plan contains a reference list of articles on page

40 dating from 1996 to 2008. One of the listed references is to Multicultural Law Enforcement: Strategies for Peacekeeping in a Diverse Society (4th Edition 2008). However, since 2008, three additional editions of this book have been published, with the 7th Edition printed on January 31, 2018 that would likely contain references to more recent issues facing the law enforcement profession and the communities they serve.

The introduction section of the lesson plan contains unhelpful negativity in explaining the difficulty of interacting in a diverse community or organization. The course also presents as somewhat abstract, intellectual, and dry in several areas. If this course is shown in PowerPoint it would be particularly dry and not memorable for students. The content should be reviewed and revised to make it more engaging.

This lesson plan is essentially identical to the 2013 version with no updates included, except for some minor re-formatting and structural changes. We highlight a few sections below as an example (this is not an exhaustive list):

> **The Challenge of Diversity**: This section notes that dealing with diversity can be at times "insurmountable" and discusses abstractly the "Seven Underlying Principles of Diversity." We found this verbiage in the training negative and not conducive to a positive emphasis on diversity from an organizational perspective.
>
> **Lesson Objective 1.1**: To increase awareness of the various dimensions of diversity, this section is too abstract, dry, intellectualized, and impractical for students.
>
> **Lesson Objective 1.3**: Discuss the term "human diversity" – the list included under this section was limited to cultural, racial, and ethnic references and should be expanded to include such things as religious affiliation, gender, gender identity, sexual orientation, language, mental capabilities, marital status, socio-economic status, and disabilities.
>
> **Lesson Objective 1.4**: List "dimensions of diversity" – this section is too abstract, impractical, and not memorable for students.
>
> **Lesson Objective 1.11**: Describe the Concept of the Four Layers of Diversity – such abstract concepts are difficult to remember and not useful to improving future behavior.
>
> **Lesson Objective 2.9**: Describe the Cultural Orientation Model – this section is too abstract, impractical, and not memorable for students.

On a more positive note, the lesson plan does include several scenarios and problems/exercises that appear informative and useful with practical application.

We recommend that APD work with Dr. Kringen and outside subject matter experts to revise this course by making it more engaging and incorporating adult learning methods into the instruction. If necessary, the time allotment to facilitate the updated lesson plan should be expanded or adjusted as appropriate. Students need to understand the organizational case for diversity and learn to effectively interact in a diverse workforce and community.

In his curriculum review report, Dr. Ferguson reviewed the six-module online course offered by TCOLE. He opined that these modules of instruction are a case study in ineffective training and offered several reasons in the Summary section of his analysis on this topic. However, Dr. Ferguson's report does not address the Academy lesson plan (discussed above) that APD submitted to Kroll for review. As noted, we have identified gaps and weaknesses in the above lesson plan and recommended revisions to the training material.

Multiculturalism and Human Relations

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on March 11, 2021.

The course examines the definitions, key concepts, and origins of prejudice, and explores the differences between implicit bias, explicit bias, and stereotyping. Students learn that the role of the peace officer includes enforcing laws impartially and treating all persons equally, including criminal justice personnel, who are equally subject to the laws that apply to everyone else. Students also learn the importance of cross-cultural communications and that, in a multicultural society like the United States, police officers must understand how to facilitate dialogue and reduce conflict.

The course covers the power of the U.S Department of Justice to investigate and prosecute bias-motivated violence in which the perpetrator selects the victim due to his or her actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. The course also examines APD's policy on hate crimes, which includes the procedure for investigating and reporting hate crimes.

Although the purpose and intent of this course is important and essential to effective police training, APD's current lesson plan for this course has a negative overall connotation. Bias, discrimination, stereotyping, and prejudice need to be more deeply taught so that students learn to better manage their inherent biases.

The following sections should be reviewed and revised for the following reasons:

> **The Functions of Prejudice** section is incomplete. Bias is born of necessity. Students must understand why it is part of human interpretation of the surrounding world, how it can be identified, and how it can be managed. Willingness is a key requirement as well. When students are taught that bias is part of the human condition, they are more willing to manage it.
>
> **The Four Basic Feelings or Attitudes Harbored by Most Prejudiced Persons** section needs more context. This section should be presented and taught in a way so that biases can be managed and not be taught in a manner that suggests people who are prejudiced are inherently "bad."
>
> **Lesson Objective 4.1**: The purpose of this lesson is to have students discuss the value of, respect for, and sensitivity to the feelings and needs of others. However, the sub-section on "important skills that should be used" lists skills that should be considered or used by the student, but it provides no learning objectives on how students can develop these skills.
>
> **Section III. APPLICATION STAGE**: This section of the course allows students to discuss their personal racial/ethnic group and provide introspection by asking and answering a series of questions. We believe this exercise is flawed and in need of revision. Not all people hold beliefs about their racial/ethnic group; some are more individualistic, and some are aligned with different groups (e.g., on economic classifications).
>
> We recommend that APD work with the new Division Manager and subject matter experts outside of the Academy to revise the Multiculturalism and Human Relations course and incorporate adult learning methods into the instruction. The time allotment to facilitate the updated lesson plan needs to be expanded or adjusted as deemed appropriate. This course should ultimately help students identify and manage their own biases before they interact with the public as a member of the department.

Dr. Ferguson agrees with Kroll that this course curriculum and lesson plan needs revision. Kroll agrees with Dr. Ferguson that, once the DEI courses are updated, there will be opportunities to reduce redundancies across the courses, excluding occasions when instructors wish to reinforce a learning objective. Kroll recommends that Academy instructors, in consultation with the Division Manager, consider other ways to reinforce the learning objectives without using the same lesson plan verbiage or scenarios from other course materials. As Dr. Ferguson confirms, this course needs more adult learning incorporated into how the material is presented to cadets.

Professionalism and Ethics

This class is taught by a TCOLE-certified and Ethics train-the-trainer Instructor and is scheduled for ten hours of instruction. The lesson plan for this course was last updated and approved by the Academy on January 14, 2021.

This course teaches that the primary responsibility of law enforcement in general, and the individual officer in particular, is to protect the people of the United States through upholding and enforcing the law. Students discuss ethical dilemmas in law enforcement and explore ways to address difficult situations. Students will become familiar with civil and criminal laws that govern a peace officer's conduct, as well as civil penalties for sexual harassment and other inappropriate behavior.

Students learn that the community's perception of its police department is influenced by how open and accessible the agency is to handling citizen complaints and policing itself. The importance of police legitimacy and procedural justice is also reinforced, including the four pillars of (1) fairness and consistency, (2) giving voice to all parties, (3) transparency and openness to the process, and (4) impartiality and unbiased decision making.

Students will become familiar with the APD Law Enforcement Canons of Ethics that was adapted from the International Association of Chiefs of Police and APD General Orders (Kroll notes, however, that no APD General Orders are cited in this lesson plan).

The scenarios used in this course primarily include the following discussion topics:

1. Identify the ethical dilemma.
2. Discuss the difference in perceptions.
3. Discuss the possible personal consequences.
4. Discuss the possible professional consequences.

The lesson plan does not incorporate how the above four points link to relevant APD policies. It is important that students are trained on relevant APD policies that require them to intercede (which applies specifically to sworn officers) and to report violations of law or policy (which applies to all employees). The lesson plan only mentions the APD General Orders on one occasion (in parenthesis under the heading: "Law Enforcement Canons of Ethics"). This lesson plan should include relevant APD policies in the General Orders Manual under Section 200: Response to Resistance, and Section 900: General Conduct and Responsibilities. The revised lesson plan should also include instruction specifically relating to the following subsections:

> On November 12, 2020, APD issued *General Order 200.1.3: Duty to Intercede*, which states: "Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor." This new requirement is an active "Bystander" mandate for which every APD officer must receive training. This important training topic is not listed in this lesson plan.
>
> *Section 900, Sub-section 900.2: Required Reporting of Violations*. APD employees (civilian and sworn) have the responsibility to report criminal activity by other employees or any breach of APD written directives (policy). This policy outlines the protocol to report criminal conduct by written memorandum to APD Internal Affairs, APD Special Investigations Unit, or any supervisor in their chain of command. Additionally, employees are required to report any employee known to have violated an APD rule, regulation, or order to their immediate supervisor. This policy also mandates

what action the Supervisor shall take in accordance with General Order 902: Administrative Investigations.

Section 900, Sub-section 902.1: Confidentiality. All information relating to an employee's suspected criminal act or General Order violation is confidential with certain articulated exceptions.

Section 900, Sub-section 900.2.2: Retaliation Prohibited. Employees are prohibited from retaliation against any defendant, complainant, witness, victim, investigator, or in any other related capacity.

The policies mentioned above are vital in managing risk to the department and enforcing employee ethical responsibilities by requiring all APD employees to report misconduct, criminal and administrative. For those employees who fail to do so, there are levels of accountability built into the disciplinary process to correct and address this behavior (as noted, the Duty to Intercede policy applies only to sworn members of APD).

Kroll notes that APD is currently evaluating bystander training provided by Georgetown University, i.e., "Active Bystandership for Law Enforcement (ABLE) Project,"[208] to prepare officers to successfully intervene to prevent harm and create a law enforcement culture that supports peer intervention. APD is also considering the New Orleans Police Department EPIC[209] peer intervention program that teaches officers to successfully intervene and which establishes protections for those officers who intervene. We commend the department for examining these programs and urge APD to adopt one of them, consistent with best practices.

Dr. Ferguson agrees with Kroll that the curriculum and lesson plan for this course needs revision. Kroll identified several gaps in the training and agrees with Dr. Ferguson that content experts would be helpful in updating this course of instruction.[210]

Fair and Impartial Policing

This class is to be taught by a TCOLE-certified instructor who is also certified as a COPS (Office of Community Oriented Policing Services, U.S. Department of Justice) – Fair and Impartial Policing instructor. This course is scheduled for ten hours of instruction. The lesson plan was most recently updated and approved by the Academy on March 24, 2021.

The Academy included this training into its curriculum in 2017 after receiving training from COPS subject matter experts in October 2016. The training is designed for cadets, patrol officers, and first-line supervisors and includes an instructor's guide, recruit patrol curriculum and training resources, and supervisors' curriculum and training resources. The training covers implicit bias and cultural sensitivity. The training applies the modern science of bias to policing and attempts to give officers the information and skills they need to reduce and manage their implicit biases. The curriculum addresses not only racial and ethnic biases, but also biases based on gender, sexual orientation, religion, and socio-economic status.

The training reference materials include a Fair and Impartial Policing lesson plan, as well as the COPS lesson plan in accordance with the APD Lexipol (General Orders) Policy Manual. The goal of the course is to provide TCOLE mandated training to the entire department so that all sworn officers in APD enforce the law equally to everyone in the community.

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[208] Active Bystandership for Law Enforcement (ABLE) | Georgetown Law

[209] http://epic.nola.gov/home/

[210] Dr. Ferguson mentions in his report this is a twelve-hour block of instruction. The updated lesson plan provided to Kroll by APD indicates the course is allotted for ten hours of instruction.

Due to the proprietary nature of the COPS Fair and Impartial Policing curriculum, this course is required to be completed in its entirety using only the training materials provided pursuant to the COPS program. The materials reviewed appear to have been developed in 2013. Overall, as this curriculum/lesson plan was created by the COPS office subject matter experts, its basic content appears acceptable as an essential DEI-related course in the Academy.

Kroll notes, however, that the training curriculum for this course is proprietary to the COPS office and any training material in addition to what has been already provided may require authorization from the developer. Kroll recommends that Academy staff discuss Dr. Ferguson's Level I and II suggestions with the COPS office to determine how his course suggestions might be accommodated.

Interacting with Transgender Individuals

This two-hour class is taught by an APD officer who identifies as transgender and is a subject matter expert with personal experience engaging with the transgender community. The instructor developed this training and helped revise the APD's transgender policy with assistance from a transgender police officer in San Francisco. The lesson plan was last updated and approved by the Academy on January 22, 2021.

The course helps students understand what it means to be transgender and addresses some incorrect myths and stereotypes that surround the transgender community. Students learn the relevant terminology currently used in the transgender community and what words/terms may be outdated or offensive, especially as applied in the context of law enforcement and community policing.

Students are also taught best practices, such as APD's policy on community policing and searches regarding the transgender community and police interactions with members of the transgender community. Students also learn to identify when an attack on a transgender person may be a hate crime, as well as statistics on current discrimination practices and suicide rates among transgender individuals.

This course is an excellent introduction to issues involved with policing in the transgender community. Moreover, that it is taught by a subject-matter expert who happens also to be a police officer provides a positive impact on new cadets. However, this course should be provided on a department-wide basis so that it is not restricted to new cadets.

Kroll agrees with Dr. Ferguson's Level I and II recommendations to ensure this course includes current information and updated data and to incorporate the other active learning suggestions provided.

Law Enforcement and the LGBTQ+ Community

For the past several years, this class has been taught by Sergeant Michael Crumrine, the President of the Austin Lesbian and Gay Peace Officers Association and a nationally renowned advocate for the LGBTQ+ community within law enforcement. Sgt. Crumrine is deeply knowledgeable about LGBTQ+ sexual and intimate partner violence investigations and has a solid understanding of the issues in cases involving LGBTQ+ victims and suspects. For the 144th cadet class, this course will be co-taught by Sgt. Crumrine and a female instructor who is also a subject-matter expert on LGBTQ issues and active in the LGBTQ community. Although this course was originally scheduled for three hours of instruction, it was recently reduced to a two-hour course. The lesson plan was last updated and approved by the Academy on January 6, 2021.

The course helps students incorporate some of the current, relevant terminology used in the LGBTQ community, especially as it applies to their role in law enforcement. The course covers some of the challenges faced by members of the LGBTQ community and addresses significant historical events that have shaped perceptions of law enforcement within the LGBTQ+ community. Consistent with what is also addressed in the transgender course noted above, the instructors will address what it means to be

transgender and how to respectfully interact with transgender individuals using preferred names and pronouns.

The course also addresses some of the unique barrier's that LGBTQ crime victims face when reporting to law enforcement, particularly concerning sexual assault crimes and intimate partner violence. Students are taught best practices when engaging victims to help overcome these barriers. Students are also taught some of the power and control tactics unique to LGBTQ+ sexual and intimate partner cases, as well as techniques they can utilize to help determine the aggressor in these cases.

Additionally, students are instructed on what constitutes sexual and intimate partner violence in the LGBTQ+ community, and the course examines some common myths and biases associated with violence in the LGBTQ+ community. Students are also educated on the neurobiology of trauma and how trauma can affect memory and recall in sexual and intimate partner violence cases.

This course is an excellent introduction to issues involved with policing in the LBGTQ community and a good supplement to the transgender course noted above. Moreover, that this course will be co-taught by two subject-matter police experts (male and female) is excellent. In future cadet classes, APD may wish to consider including an outside speaker from the LGBTQ community and potentially expanding the length of this course, especially in light of the robust LGBTQ community in Austin. This course also should be provided on a department-wide basis so that the content taught is not restricted to new cadets.

Kroll agrees with Dr. Ferguson's suggestions to update reference materials for this course where appropriate and to minimize redundancies with the Transgender course to increase time for active learning exercises (consistent with Kroll's short-term recommendation). Dr. Ferguson also suggests the addition of basic technology for use in the instruction.

Racial Profiling (Bias-based Policing)

This class is required to be taught by a TCOLE-certified Instructor with experience in the topic area and/or a subject matter expert. It is currently scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on December 11, 2020.

This course covers current departmental policies regarding racial profiling and includes a discussion of Supreme Court and other court decisions involving appropriate actions in traffic stops. Students are taught the legal definition of racial profiling and learn to identify the elements of both appropriate and inappropriate traffic stops. Students are specifically trained on APD *General Order 328: Racial or Biased Based Profiling Policy*, in its entirety.

Students also receive instruction on TCOLE's requirements on mandated department policy, data collection, and required training for new Chiefs of Police; however, these topics are not germane to the basic training requirements of police cadets, who need to become equipped to fairly and without bias enforce laws regarding police encounters with pedestrians and during traffic stops.

The core topics for racial profiling training should include, in addition to the relevant departmental policies and court decisions: (1) history of citizen complaints concerning racial profiling and the police training that initially led to this practice, (2) more behavior than just traffic stops -- including stop, question, frisk, and other proactivity, (3) a focus on search and seizure that specifically discusses the variations across race and ethnicity in the rates of all searches, consent searches, and seizures, and which highlights the behavioral components of suspicion that may be inaccurate and are not race-neutral. We recommend the Academy revise this lesson plan to include, at a minimum, the core topics noted above to ensure that students learn the information necessary to eliminate racial profiling as sworn officers in the field. For the

sake of efficiency and consistency, the Academy may want to consider linking the Racial Profiling core topics recommended into its Fair and Impartial Policing lesson plan.

Dr. Ferguson agrees with Kroll that this curriculum and lesson plan needs revision. Dr. Ferguson recommends the use of basic technology to help cadets learn. Kroll agrees with Dr. Ferguson's expertise in this area and suggests the Academy staff evaluate and consider this suggestion as part of the curriculum's revision.

Law Enforcement Survival Spanish

This class is taught by a TCOLE- and APD Spanish-certified Instructor and subject matter expert and is currently scheduled for 16 hours of instruction. The lesson plan was last updated and approved by the Academy on March 11, 2021.

The purpose of this course is to help cadets learn street survival Spanish and develop a better understanding of Hispanic culture, history, family, community, and language. Students will learn APD policy as it relates to utilizing Spanish-speaking officers and Language Interpreter Services. The Language Interpreter Service is available to APD officers 24 hours a day, seven days a week, and is used whenever necessary to perform police duties and to communicate with individuals who have difficulty communicating in English.

The course teaches students the importance of establishing trust with the Hispanic-American community and avoiding negative stereotypes. Students learn that fostering open communications effectively with the Hispanic community during police interactions includes avoiding the use of language that may be deemed offensive or derogatory in Hispanic, refugee, and immigrant communities.

Students learn that underreporting of crime is currently one of the biggest challenges facing law enforcement in serving the Hispanic American, refugee, and immigrant communities. Many members of these communities come from Latin American countries with highly repressive and authoritarian governments, where distrust of law enforcement is the norm. Occasionally, the failure to report criminal activity is due to internal community pressures, such as a fear of retaliation or a desire not to harm extended family members who are connected in some way to the criminal activity. At other times it is due to prior experience of discrimination or differential treatment against Hispanic Americans, immigrants, and undocumented workers by law enforcement officers.

Kroll agrees with Dr. Ferguson's suggestions to review and update this course content, especially the list of words cadets must study before the first class to reduce a "fear-based" mindset towards people of color, and to begin the class with non-fear-based introductions to the language. He also provides helpful suggestions on subscriptions to language learning apps and a custom curriculum.

Interacting with Drivers who are Deaf or Hard of Hearing

This class is taught by a TCOLE-certified Instructor and is scheduled for four hours of instruction. The lesson plan was last updated and approved by the Academy on February 5, 2021.

The course explains the need for this type of training and defines the terms "deaf" and "hard of hearing" as defined by Section 81.001 of the Texas Human Resource Code. The course explains the Americans with Disabilities Act (ADA), which requires that individuals who are deaf or hard of hearing must have access to the same services provided to the other 90% of the population and may not be excluded or segregated from services.

Students learn about a variety of communication aids and services that are useful to law enforcement in many different situations. This includes the videophone and video relay service (VRS) or video interpreting service (VIS), which is a video telecommunication service that allows deaf or hard of hearing individuals to

communicate over video telephones and similar technologies with hearing people in real-time via a sign language interpreter. Students also learn that there are two different types of sign language—American Sign Language (ASL) and Signed Exact English—and learn differences between the two.

Students learn to distinguish what situations require an interpreter and how to identify specialty license plates issued to individuals who are deaf or hard of hearing in the State of Texas. The course helps students understand the vast population of deaf and hard of hearing individuals in Austin, which according to the Mayor's Office consists of approximately 8.8% of Austin's residents (approximately 100,600). Moreover, approximately 20% of the state's deaf population is around Austin.

Students learn that Austin is home to the Texas School for the Deaf and that the Texas Society of Interpreters for the Deaf has been offering interpretation services for residents for over 40 years. The course addresses helpful aids that assist the deaf and hearing impaired in Austin such as (1) video screens and GPS Ranger availability to facilitate walking tours, (2) TTYs, visual stands, and visual paging to relay messages to hearing-impaired passengers at the nearby airport, (3) call boxes and flashing signals throughout the city that inform deaf drivers of what lies ahead, and (4) that most state, federal, and city government jobs are accessible to deaf individuals.

Students also learn to think differently about how to handle certain calls that involve deaf or hearing-impaired individuals (e.g., DWI, family violence, handcuffing a deaf individual, etc.). For example, students learn that deaf individuals do not like to be separated from each other since not many people can sign, and that if an officer is investigating a crime involving deaf individuals, those individuals will have a hard time understanding why they are being separated. Students also learn handcuffing a deaf person behind their back is seen in the deaf culture as trying to silence them. When a deaf person is handcuffed in front, they are still able to communicate and are usually more willing to communicate. Finally, the course addresses all current APD policies that pertain to interacting with the deaf community.

This course is a good introduction to some of the issues and resources that officers must know in the field in dealing and interacting with the deaf and hearing-impaired community.

Kroll agrees with Dr. Ferguson's suggestion to revise this course to include information about Gallaudet University's history of segregation against Black deaf culture, which is an opportunity to reinforce the importance of multiculturalism. We also agree with his suggestions to consider adding interactive learning by recruiting content experts and engaging in on-site interactions and touring the Texas School for the Deaf.

Traumatic and Acquired Brain Injury

This class is taught by a TCOLE-certified instructor with experience in the topic area. It can and should be co-taught by an outside subject matter expert. It is currently scheduled for two hours of instruction. The lesson plan was last updated and approved by the Academy on October 30, 2019.

The course explains that acquired brain injury is an injury to the brain that occurs after birth and is not related to a congenital or a degenerative disease. Students are taught that acquired brain injuries can cause temporary or permanent impairments resulting in physical, emotional, and intellectual difficulties for the affected person.

Students learn the impact first responders can have on the public when responding to a variety of incidents, including domestic violence, heart attacks and strokes, drug activity, assaults, motor vehicle accidents and DWI's, and suicide attempts, among others. Students are provided a list of resources to utilize when responding to situations where an acquired traumatic brain injury is present.

Students also learn the signs and symptoms of a brain injury, such as confusion or disorientation, loss of consciousness, severe headache, nausea or vomiting, dizziness, trouble walking, and slurred speech or

vision. The course helps students become more aware of the impact of these signs and symptoms on the conduct and demeanor of their interactions with the public and helps them understand and identify the appropriate emergency medical referral.

Note: Although this course was not originally listed as one of the DEI-related courses for review, it relates to APD first responders' encounters with members of the community who are dealing with this kind of disability. (This course was not identified for review by Dr. Ferguson).

5.5 Community Input and Participation

Community Engagement / Lived Experiences Programming. The length of the planned 144th cadet class is currently set for 32 weeks and includes 37 hours of Community Engagement programming, including approximately 30 additional hours that were not previously included.[211] Past Academy sessions devoted seven one-hour blocks of time to guest appearances from community representatives, and this has been expanded to 37 hours.

- Although the precise details of the planned additional 30 hours of community engagement/lived experiences programming are currently being developed, the stated intent is to expand upon the level of participation and input from community leaders, representatives and activists who will be invited to speak to the cadets. The new Division Manager is currently working with Academy staff to proactively research potential community partners, identify points of contact within each organization, and reach out to a point of contact to determine willingness to participate and potential topics of discussion that will provide added perspective to cadet training or existing course content.
- APD provided Kroll with the below list of organizations the Academy is currently considering including in some aspects of Academy training. Where applicable, we have indicated with an * those organizations that have participated in past Academy classes:
    - Life Anew Restorative Justice*
    - Measure Austin*
    - Citizen Led Austin Public Safety Partnership (CLASP)
    - Mobile Loaves & Fishes
    - Mexican Consulate
    - Refugee & immigrant Outreach
    - Texas Association of the Deaf*
    - Transgender and Gender Marker Project
    - Austin Justice Coalition
    - Reimaging Public Safety Task Force
    - National Alliance on Mental illness (NAMI)*
    - The Settlement Home for Children*
    - Mothers Against Drunk Driving (MADD)*
    - The Jeremiah Project
    - The African American Youth Generation

In discussions with Kroll, the Division Manager has agreed to have the Academy reach out to such organizations as Just Liberty, the Austin Area Urban League, Texas Appleseed, and the Austin Equity Office, among others, to consider including as part of the community engagement programming. The Division Manager also agrees that some of the department's harshest critics should be contacted to see if

[211] In reducing the length of the training from 32 weeks to 30 weeks, the Academy plans to cut all intermediate courses, which will be taught over the first two years following graduation from the Academy. We believe that these intermediate courses are more effectively taught once the cadets have been on the street patrolling for a period of time. Thus, the planned reduction in the length of the Academy should not reduce cadets' readiness upon graduation. The 30-week content at the Academy will include all TCOLE / BPOC requirements and certain important tactical training courses, while enhancing the amount of community engagement and instruction on diversity, equity and inclusion content addressing cultural understanding and competency.

they are willing to have a meaningful conversation with cadets. Kroll believes that true and effective community engagement must include tough conversations that develop, if not agreement, at least mutual understanding of each other's perspectives. The Division Manager intends to have instructors reach out directly to these and other organizations, as there needs to be coordination and collaboration between the community representatives and the Academy before anyone actually comes in and speaks, with agreement on topics of discussion, parameters of discussion, and timing.

In addition, the Division Manager recently met with APD's Victim Services Division, which has agreed to participate in roleplays during Academy training, both as victim services role players and as victims, to provide feedback on how responses can be more victim-centered or trauma-informed, as well as to help cadets become familiar with how victim services would interface at a crime scene. Victim Services also has agreed to assist the Academy with getting instructors in touch with their community network (including Asian Family Support Services) to enable more lived experiences as part of the Academy's community engagement hours.

Kroll finds that the additional emphasis on community engagement and community input, combined with added course content such as "The History of Policing and Race in America" to be co-taught with a prominent subject-matter expert from the community, are positive additions to Academy instruction that place a necessary focus on the importance of meaningful police-community interactions and mutual understanding. As stated in the recent report of the Council on Criminal Justice Task Force on Policing:

> *Police must learn about and openly share with the public the histories of racial and other biases and injustice within their departments and law enforcement more generally. This process of acknowledgment should be part of a series of reconciliation efforts that includes empathic listening to community perspectives on police and their role in the nation's race relations—both past and present. A commitment to eliminating racial and other biases in policing, accompanied by public accountability to make good on that commitment, should follow. This public acknowledgment is particularly important to communities of color and all heavily policed communities, including immigrant and undocumented communities, LGBTQ+ communities, and people with disabilities and mental health challenges.*[212]

Community Video Review Panel (Panel): The recently completed Community Report of the Video Review Panel highlighted the hard work and diligent efforts of the Panel members that reviewed and provided feedback to a small group of APD officials on approximately 110 training videos over a seven-month period. The Panel consisted of a diverse set of community voices with backgrounds in a variety of fields, including civil rights, criminal justice reform, social justice advocacy, community organizing, academics and education, mental health, and psychology. The Panel met approximately twice a month and reviewed a selection of training videos used by the Academy pertaining to the following modules: Arrest, Search and Seizure; Arrest and Control; Crisis Intervention; De-escalation; Tactical Communication; Use of Force; and Use of Force - Legal. The Panel's task was to identify potential racial and gender inequities in the videos and note ways in which the video training material may reinforce larger cultural stereotypes and narratives.

- The Panel found that the vast majority of the videos were outdated and "disappointing in quality," contained "unprofessional or sensationalistic commentary," and perpetuated harmful stereotypes "against Black and Brown communities." The report echoed concerns expressed by many of the community leaders we spoke with that APD trains its cadets to reflect an "us vs. them" mentality that potentially escalates encounters between police officers and the public, particularly encounters with people of color, homeless individuals, and people with mental health issues.

[212] https://councilonj.foleon.com/policing/assessing-the-evidence/foundational-principles/

- The Panel also found that the recipients of violent and deadly responses from police as depicted in the videos were disproportionately working-class people and people of color. These same groups seldom benefited from crisis intervention or de-escalation strategies displayed by officers in the videos. The Panel found that the training videos emphasized the need for officers to assert control over communities of color, which often leads to rapid escalation with violent and sometimes deadly results for minor infractions. The Panel further highlighted that:
    - Women, trans, and non-binary people were limited in representation, with a "worrisome pattern of white male officers acting violently towards Black women because of perceived slights."
    - The majority of videos showed examples of "what not to do" instead of reinforcing desirable behavior.
    - The language used frequently in videos (i.e. "stop resisting", "just relax") often lacked awareness of how community members might perceive interaction with officers as threatening rather than helping.
    - The videos mostly reinforced the notion that every police-citizen encounter is potentially life-threatening, which encourages police overreactions and excessive uses of force.
    - "Many videos emphasized a transactional approach to interacting with the community with a focus on liability and quid pro quo exchanges, rather than what is needed to develop genuine, authentic interactions with community members to sustain long-term trust and relationships."
    - "Videos that showed officers antagonizing community members and using excessive force were attributed to aberrant individual behavior rather than acknowledging the cultural and systemic factors that permit or encourage such behavior."

Panel Recommendations. The Panel's recommendations addressed several systemic, community impact, and instructional concerns. The recommendations fell into four broad categories of issues and addressed the need to: (1) identify and root out biases in training materials, (2) develop more effective adult learning pedagogies, (3) build trust and positive relationships with communities, and (4) emphasize systemic change. The final report of Life Anew, which facilitated much of the work conducted by the Panel's community members and APD personnel, highlighted the following recommendations, among others, that called on APD to:

- Regularly implement diversity, race, equity, and inclusion professional development throughout APD.
- Engage in a larger conversation around racial justice, gender equality, and systemic change through an equity lens.
- Use diverse community panels in the Academy to have conversations about race, gender roles, expectations, and stereotypes.
- Clarify APD's policy on bystander intervention when an officer is behaving badly.
- Provide more active training for handling protests with non-militaristic approaches.
- Allow cadets to have more in-depth conversations about race throughout every training module. These conversations should involve people of color who have personal experience with racial equity issues and the training should teach non-fear-based policing in diverse communities.

- Increase the diversity (gender, race, ability, ethnicity) of police officers and the community members depicted in the training videos.
- "Eliminate the overrepresentation and fear mongering towards black bodies and people of color."
- Eliminate the siloed approach to teaching different content at the Academy by requiring instructors to work closely together and across subjects "to build a coordinated and integrated curriculum . . . to make the training flow better."
- Show more scenarios of positive interactions between people of color and the police.
- Include scenarios that demonstrate accountability for when policing goes wrong.
- Pair "what not to do" videos (when they are needed) with "what to do" videos, so cadets will clearly understand what they are supposed to do.
- "Focus on a service mindset and abandon the warrior mindset." Avoid selecting militaristic videos.
- Be intentional about showing officers demonstrating empathy and being "decent human beings." Emphasize "positive police and community interactions through repetition."
- Use videos from mental health experts and connect the dots between mental health and de-escalation.
- Continue use of a Community Review Panel to collaborate with APD and recommend training material selection.

APD Acceptance of Panel Recommendations. Although difficulties were encountered initially in attempts to establish trust and communication between APD and community representatives, the end result demonstrated a healthy collaboration, with several Academy leaders and instructors actively participating in the review panel's work. As a result of that approximately seven-month effort, APD has accepted all the Panel's recommendations concerning the video content and is actively making changes to its video library in response to those recommendations.

- The Academy is currently in the process of eliminating videos that were found to be offensive or insensitive to community concerns and replacing them where possible with more up-to-date and non-offensive depictions of subjects interacting with more diverse officers.
- In addition, Academy instructors are actively searching for appropriate replacement videos that more effectively depict the right way to do things, as opposed to videos demonstrating what not to do, as was the case with many of the videos reviewed by the panel. Where replacement videos have not been identified, Dr. Kringen has been provided the authority to replace such instruction with other adult learning means.
- APD also agreed to the Panel's many other recommendations and has outlined a general action plan concerning how it intends to implement the recommendations offered. Many of the recommendations provided are directly or indirectly incorporated into Kroll's short-term and long-term recommendations outlined in Section 7 of this report.

Formalizing the Community Video Review Process. Finally, APD is currently in the process of establishing a formalized system to comprehensively review, with community input, all future video content that has not otherwise been reviewed by the Panel. The previous Panel met with Dr. Kringen on March 31, 2021. Next steps include introducing Dr. Scott Bowman, who has agreed to serve as a new member, and finalizing committee members that want to stay on. A second Panel meeting occurred on April 20, 2021. The new Panel plans to meet pursuant to a regular schedule moving forward.

5.6 Professionalism of Instructors

Instructor Professionalism. Kroll has been uniformly impressed with the passion and commitment to teaching exemplified by the Academy's current leaders and instructors. They appear genuinely open to ideas that will make them better instructors and help cadets develop into first-rate police officers.

- Kroll notes that changing the culture of an institution and long-term notions embedded into the way things have always been done is no easy task. While most instructors and supervisors state they are open to working with content experts and incorporating active learning strategies, they are passively awaiting guidance and input from leadership, including the new Division Manager, to help advise them on changes to teaching methods and course content.
- Nevertheless, Academy staff are open to incorporating outside civilian content experts as instructors in certain courses (e.g., History of Policing and Race in America and some other DEI-related courses), if done in coordination and partnership with APD personnel.
    - At present, except for History of Policing and Race in America (discussed in Section 5.4 above), plans to incorporate outside content experts in other classes (e.g., criminal defense attorney to talk about search & seizure law from a defense perspective; homeless advocate to discuss issues faced by the homeless population; mental health expert to address relevant issues, etc.), while being considered, are not yet developed. However, Dr. Kringen has included this as a top priority as she works with instructors to plan for the next and future cadet classes, and it will be a priority of the newly established Academy Curriculum Review Committee.

5.7 Cadet Injuries / Graduation Rates

5.7.1 Cadet Injuries (2015 – 2020)

According to Appendix I of the Community + Equity Assessment Series report, and as confirmed by Kroll through APD-provided data, cadet injuries over the past six years have fluctuated as follows:

Nature of Injury	2015	2016	2017	2018	2019	2020
Absorption, Ingestion, Inhalation	11	5	11	4	3	0
Contusion	12	13	16	12	23	1
Concussion	0	1	0	1	0	0
Cut, Puncture, Scrape, Laceration	4	2	0	0	0	3
Dermatitis	0	0	0	21	5	0
Dislocation	0	0	0	0	1	1
Electric Shock/Taser	0	0	0	0	2	0
Foreign Body	0	0	0	0	1	0
Fracture	0	2	1	1	2	1
Hearing Loss	0	0	0	1	0	0
Heat Exhaustion	8	13	9	10	10	2
Inflammation	3	3	3	0	1	0
Laceration	2	4	3	1	5	1
Multiple Physical Injuries Only	0	5	2	4	5	0
Sprain/Strain	50	75	32	61	40	3
Covid-19	--	--	--	--	--	56
TOTALS:	**90**	**123**	**77**	**116**	**98**	**68**

- According to data provided by APD, from 2015 to 2020, at least 509 cadet injuries occurred at the Academy. The racial and ethnic breakdown shows that, of these 509 injuries, 348 (68.37%) were to white cadets, 85 (16.7%) to Hispanic cadets, 57 (11.2%) to Black cadets, and 19 (3.73%) to Asian cadets. As noted in the Equity Assessment report, although "the percentage of injuries sustained by white cadets reflects the percentage of white candidates that graduate from the academy, the percentage of injuries sustained by Black cadets (11.2%) is more than twice the percentage of Black cadets that graduate (5.19%)."[213]
- The Academy requires a healthy dose of physical fitness and defensive tactics in an effort to prepare cadets for any number of crisis situations they may confront at some point in their careers as police officers. As noted by former Chief Manley, "we pepper spray our cadets because officers need to know what it is like. We have our cadets engage in boxing because we hire people who have never fought before, and we want them to be okay when this happens after they become officers."

5.7.2 Graduation Rates by Race and Gender

Graduation rates at the Academy over the last five years show similar racial and gender disparities:

Academy Graduation Rates by Race and Gender, 2015 - 2020

Race	Gender	Graduation Rate
White	Men	81.6%
Black	Men	48.5%
Hispanic	Men	83.4%
Asian	Men	65.6%
White	Women	66.76%
Black	Women	52.5%
Hispanic	Women	52.78%
Asian	Women	100%[214]

- APD's data illustrates that Black cadets are less likely than their peers to graduate from the Academy, and more likely to be injured, than any other race. Female cadets also have lower graduation rates than white and Hispanic male cadets. As a result, Black and female cadets graduating from the Academy are underrepresented when compared to the population of Austin as a whole.
    - In terms of statistical significance tests (Chi-square analyses), overall Black cadets are significantly ($p < .01$) less likely than non-Black cadets to graduate over the entire period

[213] "Community + APD Equity Assessment Series: APD Training and Recruiting Divisions, The Peace Mill Research and Communications," page 9 (December 14, 2020).

[214] According to the Report of the Community + APD Equity Assessment Series, City of Austin Equity Office, December 14, 2020, page 8, APD has recruited one Asian woman who has successfully completed the Academy within the past five years.

examined.[215] This pattern was only true for Black cadets and not for other racial/ethnic groups.

- As noted elsewhere, however, there appears to be a shift in this long-term pattern. The race differences were not significant in the last two recruiting classes (142M and 143). Thus, the overall race-graduation differences (particularly Black cadet failure patterns) were driven by pre-2020 patterns.
- Overall, female cadets are also significantly ($p < .01$) less likely than male cadets to graduate over the entire period of study. However, the gender differences were not significant in the last two recruiting classes (142M and 143). Thus, the overall gender-graduation differences were driven by pre-2020 patterns.
- Limited statistical power inhibits our ability to determine whether Hispanic females and Black females fail to graduate at a divergent rate than all other groups. However, each factor alone (race and gender) were clear predictors of graduation in the pre-2020 trends.

5.7.3 Statistical Analysis of Data

To better understand the experiences of cadets within the various academy settings, we conducted a series of statistical analyses on the data collected by APD documenting both injuries and graduation rates from the Academy. First, we examined the likelihood of graduation for candidates who began training between January 2015 (130 modified) and February 2020 (class 143).[216] This equates to 695 individuals who began training, of which 72.9% (N = 507) graduated from the Academy.

We further examined if the overall 72.9% APD graduation rate is consistent across demographic groups. As a first step, the research team used binary logistic regression analysis, a regression-based framework to assess whether there were distinguishing characteristics of cadets that delineated their likelihood of graduation (value = 1) or non-graduation (value = 0) as the outcome measure. The statistical framework used in this report is based upon the null/alternative hypothesis counterfactual model that assesses whether there are differences that can be attributed to chance (supporting the null hypothesis) or beyond chance (supporting the alternative hypothesis). The corresponding p-value follows the conventional framework of .01 (or 99% confidence) and .05 (or 95% confidence). Thus, statistically significant findings suggest the differences across categories or between groups are beyond chance at the 95% or 99% confidence levels, which is the conventional social scientific threshold.

The measures of interest included in the analyses are indicator variables, coded as dichotomous in nature: modified class (value = 1 for cadets within modified classes) and its inverse (non-modified classes, coded as value = 0 for cadets in non-modified classes); male (coded as value = 1 for males, which has an inverse value = 0 for females); and, Black (coded as value = 1 for all Black cadets, and its inverse as value = 0 for all non-Blacks).

Table 1 below shows there are two statistically significant coefficients that distinguished graduation from non-graduation among the pool of cadets. First, Black cadets are significantly less likely to graduate compared to other racial groups (b = -.777, s.e. = .293, p <.01). Second, if the cadets are male (b = .547,

[215] The Chi-Square results were derived from the Pearson Chi-Square statistic. Chi-square analyses are based on the null/alternative hypothesis counterfactual framework that assesses whether there are differences across categorical measures (e.g., race and sex with graduation). The corresponding p-value follows the conventional framework of .01 (or 99% confidence). Thus, significant findings suggest the differences across categories (e.g., Black vs. non-Black with graduation) is beyond chance where $p < .01$.

[216] As explained on page 31, the Regular Academy is an approximately eight-month program for police officer candidates with no prior law enforcement experience, while the Modified Academy is approximately four months long and designed for officer candidates who have sufficient law enforcement experience in another agency.

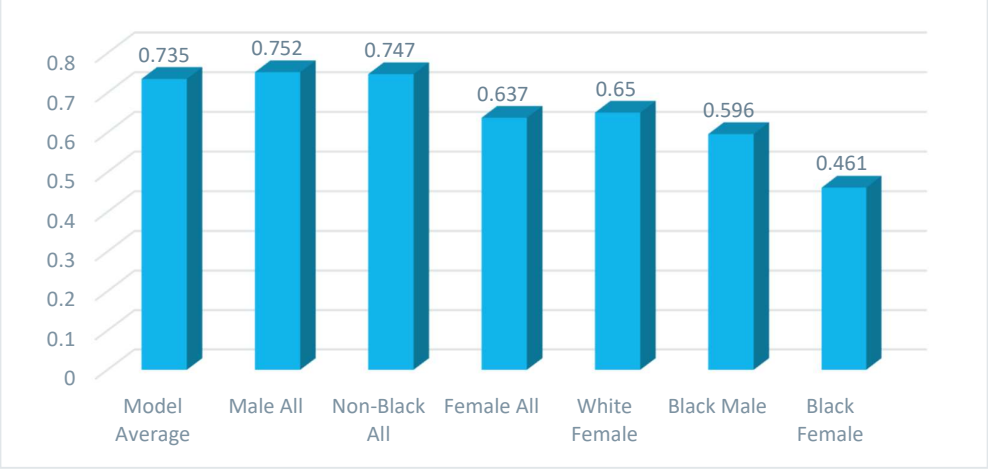
s.e. = .224, p < .01), they are also significantly more likely to graduate compared to females (which means that females are significantly less likely to graduate when compared to males). These findings hold even after controlling for injuries and attendance in a modified class. Importantly, there are no significant differences between cadets who are injured versus those who are not injured in their likelihood of graduating from the training academy. In terms of overall graduation rates, the modified classes approached significance (p = .08) but did not quite reach that threshold (suggesting that modified classes had a marginally, although not significantly higher rate of graduation relative to standard length classes).

Table 1. Logistic Regression Estimates for Graduation (Value = 1) or Failure to Graduate (Value = 0) for Austin Police Academy (N = 507) between 2015 and 2020

Measure	Beta	St. Error	P-Value
Male	.547	.224	.014
Black	-.777	.293	.008
Injured	-.048	.177	.787
Modified Class	.541	.311	.082
Constant	.581	.233	.013

To further explore these relationships, Figure 1 below shows the predicted probabilities of graduation based on cadets' race and sex. A predicted probability can be interpreted roughly as the likelihood of the event occurring after statistically controlling for everything else at their means. That is, these scores predict the likelihood that an individual factor influences graduation rates, all else being equal. For example, the probability of graduation for male cadets is 75.2%, compared to 63.7% probability for females.

Figure 1: Predicted Probabilities of Graduation Based on Gender and Race of Cadets



Further examining cadets by race and sex demonstrates there are essentially two groups of cadets that differ in their likelihood of graduation.

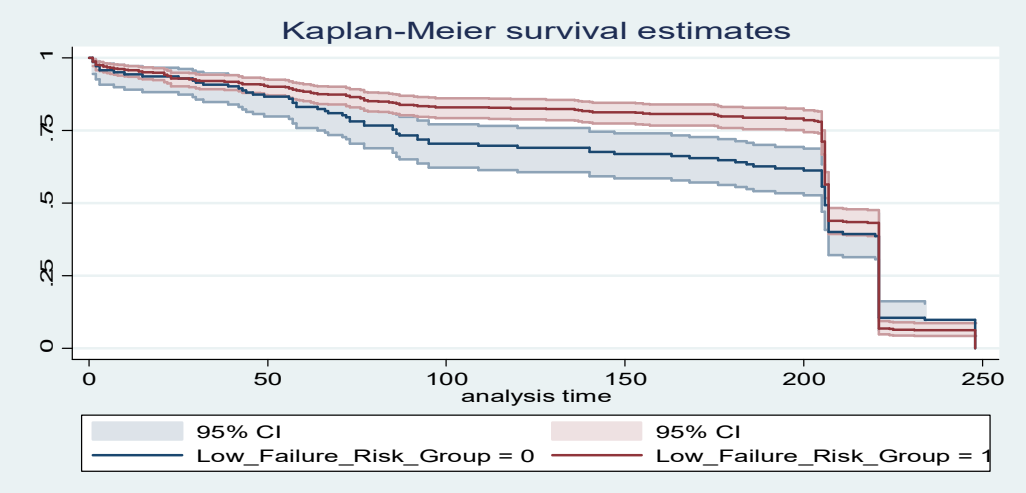
- **Group 1:** Cadets who are female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprises roughly 23% of the classes.
- **Group 2:** Non-Black males (White males, Hispanic males, and Asian males), which comprises roughly 77% of the classes.

The results show that ***Group 1 is at a higher risk of not graduating from the training academy***, while ***Group 2 is at a lower risk for failure to complete academy training***.

When attempting to delineate potential influencing or intermediary factors between these two groups of cadets, we next examine Kaplan-Meier survival curves. These curves are created from a statistical technique that distinguishes between training onset and time until academy dropout. This analysis includes all cadets, with those who graduate as 'censored' (i.e., not experiencing a 'failure' event) and those who failed to complete the Academy, while also noting the specific periods of the greatest likelihood of Academy dropout.

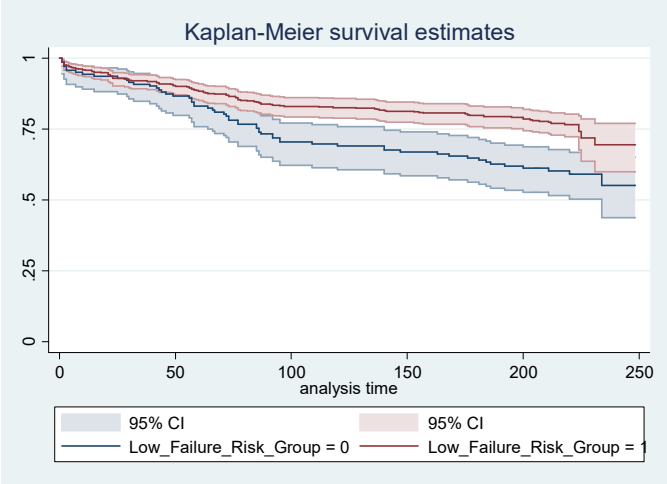
Figure 2 graphically displays that the "time to attrition" is roughly identical for the two groups initially. However, at roughly day 55 or so, the trajectories of the two groups change. At this point, the *High Failure Risk Group* (Group 1, comprised of Black and female cadets) becomes significantly more likely to not complete the Academy training, compared to the *Low Failure Risk Group* (Group 2, comprised of all non-Black males). The distinct and divergent trajectories toward graduation persist for the duration of the time in the Academy, from roughly day 55 onward.

Figure 2. Kaplan-Meier Survival Analysis for Completion of the APD Training Academy



While injury alone did not distinguish graduates from non-graduates, among these two groups (Group 1= females or Blacks, compared with Group 2 = all non-Black males) the patterns of injuries are somewhat distinct. Using the same Kaplan-Meier survival estimates, we examine *time until injury* (see Figure 3 below). The findings show that Groups 1 & 2 have different trajectories toward injuries as their time in the Academy progresses. Roughly 10% of each group reports an injury before the end of the first day; their risk of injuries initially is the same. However, the average number of days until injury for Group 1 (*High Failure Risk Group*) is 55 days, compared to 66 days for Group 2 (*Low Failure Risk Group*). Also of note, roughly 25% of those injured from Group 1 (*High Failure Risk Group*) are injured by the end of the 8th day (second week of training), compared with the 18th day for the 25th percentile of Group 2 (*Low Failure Risk Group*) who are injured. In short, the risk of injury is the same for the first day of training (when approximately 10% of each group report injuries), but after the start of the second week of training, the trajectories toward injuries diverge between these two groups and these differences persist throughout the duration of the Academy.

Figure 3. Kaplan-Meier Survival Analysis for Cadet Injury with the APD Training Academy



We also conducted a series of sensitivity analyses. The findings show that the *types of injures* for cadets across race and sex are virtually identical in terms of percentage distributions. That is, cadets in both Groups 1 & 2 are inflicted with the same types of injuries. The difference between these groups is *when they are injured*, with an earlier onset more likely for Group 1 (female or Black cadets), compared to later onset of injuries for Group 2 (all non-Black males). In summary, cadets in the *High Failure Risk Group* (Blacks and females) are more likely to be injured earlier in the training academy program, compared to those who are at lower risk of failing to complete the Academy.

Importantly, the divergence across race and gender groups related to the likelihood of graduation does not occur within the modified/shortened classes (which comprises roughly 13% of all cadet experiences). However, Black and female cadets are less likely to be in the modified classes. Specifically, Group 1 (Blacks or females) comprise 23.8% of non-modified classes, but only 9.9% of modified classes.

We also examined reasons for failure among the cadets, which is dichotomized as voluntary or involuntary removal from the Academy. Consistent with prior findings, we found that within the modified classes there were no race or officer sex differences that were associated with the type of failure (voluntary or involuntary). However, within non-modified classes, the Pearson's Chi-Square statistic (a goodness of fit statistical test to assess whether there are associations between categorical measures, in this case, race, sex, and types of graduation failure) showed that females were marginally significantly ($p < .10$) more likely to voluntarily withdraw from the Academy than were males. Table 2 (below) shows the results of this bivariate statistical analysis, which included the 174 cadets who failed to graduate the non-modified academies in this study period. Roughly 69% of females who failed to graduate the Academy during this period did so through voluntary withdraw; comparatively, only 54% of males who failed to graduate the Academy did so voluntarily. There were no other discernable correlates (e.g., cadet race) associated with voluntary versus involuntary failures.

Table 2: Pearson's Chi Square Results for Reasons for Graduation Failure (Voluntary Withdraw versus Involuntary Failure) between Male and Female Cadets in Non-Modified Classes (N = 174).

Demographic Correlate	Voluntarily Withdrew	Involuntarily Failed	Pearson's Chi-Square
Females	29 (69.0%)	13 (31.0%)	2.75, (1 df), p = .097
Males	72 (54.5%)	60 (45.5%)	

*Percentages are displayed in 'rows' for comparative purposes

Finally, the most recent class (Class 143) did not have any differences across cadets' race and sex that corresponded with the likelihood of graduation. For Class 143, only one measure (injuries) predicted the likelihood of graduation, with those who were injured significantly less likely to graduate. Also note that 86% of these reported "injuries" were COVID-19 positive tests.

Summary

The findings from the logistic regression models, predictive probabilities, Kaplan-Meier Survival analyses, and the sensitivity tests can be summarized as follows:

1. Nearly 73% of cadets entering the APD Training Academy successfully graduate.
2. The likelihood of graduation varies significantly across cadets by race and sex. Specifically, Black and female cadets are statistically significantly less likely to graduate compared to cadets of other races and male cadets, respectively.
3. Overall, the likelihood of graduation is not significantly impacted by injuries within the Academy.
4. Modified (shortened) classes had a marginally, although not significantly higher rate of graduation relative to standard length classes.
5. The predictive probability of graduation ranges from a high of 75.2% for males to a low of 46.1% for Black females.
6. Two groups of cadets significantly differ in their likelihood of graduation and timing of injuries.
    - Group 1 (*High Failure Risk Group*): Cadets who are female *or* Black (Black males, Black females, White females, Asian females, and Hispanic females), which comprises roughly 23% of the classes.
    - Group 2 (*Low Failure Risk Group*): Non-Black males (White males, Hispanic males, and Asian males), which comprises roughly 77% of the classes.
7. Group 1 cadets are significantly less likely to complete the Academy training, compared to cadets in Group 2. The time to attrition is roughly identical for the two groups initially; however, at roughly day 55, the trajectories of the two groups change, with Group 1 less likely to complete the Academy from that point forward.
8. Injury alone did not distinguish graduates from non-graduates; however, injury patterns differ across these two groups.
    - Roughly 10% of each group reports an injury before the end of the first day; their risk of injuries initially is the same.
    - The average number of days until injury for Group 1 (*High Failure Risk Group*) is 55 days, compared to 66 days for Group 2 (*Low Failure Risk Group*).
    - A quarter of those injured from Group 1 sustain their injuries by the end of the 8th day (second week of training). By comparison, a quarter of the injuries from Group 2 occur by the 18th day.
9. The *types of injuries* sustained by cadets do not differ significantly across race/sex group; however, there are differences in *when they are injured*, with an earlier onset more likely for Group 1 (female or Black cadets), compared to later onset of injuries for Group 2 (all non-Black males).
10. Graduation rates for the modified (shortened) classes do not differ significantly across race and gender; however, Black and female cadets are significantly less likely to be in the modified classes (9.9% of cadets in non-modified classes are Black or female, compared to 23.8% of non-modified classes).

11. The reason for graduation failure (voluntary withdraw versus involuntary failure) was marginally significantly ($p < .10$) divergent when comparing males and females. Specifically, females who did not pass the Academy (within non-modified classes) were more likely than males to voluntarily withdraw.
12. The most recent class (Class 143) did not have any differences across cadets' race and sex that corresponded with the likelihood of graduation; however, injured officers are significantly less likely to graduate (86% of injuries are COVID-19 positive tests).

Positive Changes. Kroll notes that the positive changes in the diversity of Academy leadership and to some of the more physically and psychologically intense components of the Academy (i.e., elimination of past abusive practices), as well as a distinct philosophical shift among Academy leadership to actively encourage all cadets to succeed, suggests that the Academy is conscious of and working to eliminate these inequities.

Recruiters Underutilized. The unique relationship that develops between APD recruiters and cadets is currently underutilized. Recruiters typically get to know cadets well and develop a more personal relationship with them than do Academy instructors. In the past, APD recruiters would reach out to a cadet if he or she left the Academy to obtain feedback and discuss what happened. We are told that this practice has been discontinued, although APD recently agreed to reinstitute it.

Since recruiters have a prior relationship with the cadets and perform a different function than Academy instructors, they can be a good sounding board for why a cadet left the Academy. Was it a personal decision or circumstance beyond their control such as a testing failure? Exit feedback can ensure that the Academy identifies opportunities to improve recruitment and retention. Given the current diversity of the Recruiting Unit, recruiters could occasionally assist Academy instructors in role-play scenarios and group team building exercises when needed. Increasing recruiters' interactions with cadets as they train could also serve as a form of emotional support for cadets. The recruiters often know about the cadets' personal lives and could help identify for Academy staff those cadets that may be dealing with personal challenges, such as illness of a family member, loss of a loved one, financial or other issues that could impact performance.

5.8 Crisis Intervention Team Training

In September 2018, a report from the Office of the City Auditor reviewing APD's responses to mental health-related incidents found that "APD has the highest per capita rate of fatal police shootings involving persons believed to be experiencing a mental health crisis."[217] Additionally, the report found that the department's crisis intervention team (CIT) program, developed as a best practice program, did not meet all of the core requirements for best practices developed by CIT International, and as a result, placed people experiencing a mental health crisis in Austin at higher risk of a negative police interaction.[218] Two more reports, one from the Meadows Mental Health Policy Institute sanctioned by Austin City Council,[219] and one from the University of Texas School of Law Human Rights Clinic and the Austin Community Law Center,[220] supported these claims, and each made additional recommendations to improve the department's response

[217] Office of the City Auditor, "APD Response to Mental Health-Related Incidents" (2018), 7.

[218] *Ibid*.

[219] The Meadows Mental Health Policy Institute for Texas, "Recommendations for First Responder Mental Health Calls for Service" (2019), http://www.austintexas.gov/edims/pio/document.cfm?id=320044.

[220] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings" (2019), https://law.utexas.edu/wp-content/uploads/sites/11/2019/09/2019-09-HRC-APD-Mental-REport.pdf.

to mental health-related incidents. Since these reports, the Academy has greatly improved its CIT training, as noted below.

Crisis Intervention Training. The Academy has greatly improved its CIT training in recent years and developed a training program that is consistent with national best practices. The 144th cadet class schedule includes an entire week devoted to CIT training, which according to the National Alliance on Mental Illness (NAMI), helps "create connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness and their families." [221] Combined with collaborative community partnerships, effective CIT training "improves communication, identifies mental health resources for those in crisis and ensures officer and community safety."[222]

- The CIT model is a police-led, trauma-informed, collaborative response for behavioral health crises that involves training patrol officers to recognize and de-escalate situations involving individuals experiencing a behavioral health crisis and to refer those individuals to appropriate services, as opposed to conducting an arrest, when possible. The goals of CIT programs are to increase the safety of police interactions with individuals experiencing a crisis, to improve access to behavioral health services for individuals in crisis, and to reduce reliance on the criminal justice system in addressing behavioral health-related challenges. These programs have most traditionally been used to address individuals experiencing mental health or substance use-related crises.
- CIT training not only provides officers with more tools to do their jobs safely and effectively, but it also improves their knowledge of mental illness and community resources.
- Several evaluations have found that CIT training improves officer knowledge surrounding behavioral health-related challenges, reduces stigma associated with behavioral health, and increases officer empathy and confidence in their ability to successfully intervene in a crisis incident.
- Researchers have found that CIT training successfully increases officer awareness of behavioral health services within their communities and their support for referring individuals in crisis to these services.
- Evaluations show that CIT training increases officer familiarity with de-escalation techniques and support for de-escalating crisis events.

Curriculum Evaluation. The time allotted for the Academy's CIT course is 40-hours of instruction. For someone to qualify as an Academy instructor for CIT training, he or she must be one of the following:

- An active member of the APD CIT Unit;
- A certified TCOLE Instructor; and/or
- A subject-matter expert – i.e., must be currently serving as a mental health officer or as a member of a Crisis Intervention Team for at least two years in APD or have Mental Health Peace Officer certification through TCOLE.

The following mental health agencies and organizations provide subject matter experts (guest speakers) and training materials to assist in the Academy's CIT training:

- Integral Care

[221] https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs.

[222] *Ibid*.

- Adult Protective Services (APS)
- National Association on Mental Illness (NAMI)
- The Military Veteran Peer Network (MVPN)
- The ARC of Texas
- Homelessness Outreach Street Team (HOST) - a collaboration of several mental health service organizations in Austin.

The above agencies provide mental health services and expertise in crisis intervention, adult protection, child & family services, intellectual and developmental disabilities (IDD), Post Traumatic Stress Disorder (PTSD) (including military sexual trauma), traumatic brain injury, and homelessness.

The Academy's CIT training includes classroom instruction on various forms of mental illness, their causal factors, and the impact such illnesses have on individuals. There is also instruction on what signs or symptoms a student might encounter when engaging a citizen involved in a mental health crisis. Scenarios and role-play exercises are cooperatively graded and observed by Integral Care.

The six selected role-play exercises were used with the permission of Ozaukee County NAMI and the Texas Veterans Commission. These six role-play videos total approximately twenty-six minutes in length. Role play exercises involving de-escalation training total four hours during the CIT course of instruction, which includes an evaluation of de-escalation principles during the exercises.

The role play scenario-based training provides students with realistic life scenarios that replicate exposure to the potential stressors and challenges of engaging with people experiencing a mental health crisis. The practical demands of officer safety, de-escalation, and problem solving are included in the training. The goal of this training is to enable students to use the skills and tools learned to successfully de-escalate these encounters. Kroll finds that the Academy's CIT training is comprehensive and involves a balanced mixture of classroom instruction, role play scenario-based exercises, and instruction in collaboration with mental health subject matter experts that is consistent with best practices. However, we note that the 2019 report from the University of Texas referenced above suggests that, while Austin's use of a Crisis Intervention Team partially aligns with the "Memphis Model," Austin's program does not incorporate all best practices for training, like refresher courses and visits to mental health facilities.[223]

Additional CIT Instruction. After two years of law enforcement service, APD officers can voluntarily receive an additional 40 hours of training to become CIT Patrol Officers, who directly respond to calls regarding incidents involving a person in a mental health crisis. Members of a separate Crisis Intervention Unit are responsible for administrative tasks like reviewing all calls classified as relating to a mental health crisis, functioning as the liaison between APD and organizations in the mental health community, and assisting with training the CIT curriculum at the Academy.

Kroll finds that the Academy's CIT training is comprehensive and involves a balanced mixture of classroom instruction, role play scenario-based exercises, and instruction in collaboration with mental health subject matter experts. However, while APD has instituted several reforms to the program, the Academy should continue to monitor the success and failures of the program and consistently refer to up-to-date best practices. In addition, APD should continue to build collaborations with various mental health-related entities, increase emphasis in training on reducing stigma of mental illness among officers, and require regular refresher courses on CIT principles.

[223] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings," 17-21.

5.9 Additional De-escalation / Use of Force Training

ICAT Training. Within the past year, APD has incorporated ten hours of *Integrating Communications, Assessment, and Tactics* (ICAT) training into its curriculum.

- ICAT is an evidence-based best practice designed by the Police Executive Research Forum (PERF) to help police officers "safely and professionally resolve critical incidents involving subjects who may pose a danger to themselves or others but who are not armed with firearms." (https://www.policeforum.org/assets/icattrainingguide.pdf). In its original format, ICAT training is designed as a 16-hour training block.[224]
- ICAT training instructs police officers in de-escalation tactics and critical thinking skills for the management of potentially volatile police-citizen encounters, encouraging the integration of crisis recognition and intervention, communication skills, and operational tactics in police responses. This training is designed for patrol officers responding to circumstances involving persons in crisis – that is, individuals that may be behaving erratically due to mental health concerns, substance use, situational stress, and/or intellectual/developmental disabilities.
- The ICAT training is the only police de-escalation training that has been shown through independent, empirical research to significantly reduce use of force, along with officer and citizen injuries (Engel et al., 2020).
    - Although officers have fewer options when dealing with threats involving firearms, ICAT is a training guide designed to fill a critical gap in training police officers how to respond to volatile situations in which subjects are behaving erratically and often dangerously, while unarmed or armed with a weapon other than a firearm (e.g., knife, baseball bat, rock, etc.). As explained by PERF, the ICAT Training Guide "includes model lesson plans and support materials (including Power-Point presentations, videos, and other resources) in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics. ICAT then integrates these skills and provides opportunities to practice them through video case studies and scenario-based training exercises."
    - ICAT's course content includes Legal Concepts, Critical Decision-Making, Crisis Recognition, Communication, and Tactics. Students learn to demonstrate key verbal communications skills that are critical to defusing (de-escalating) tense situations and gaining voluntary compliance. Students also learn to explain concepts such as "tactical pause," distance plus cover equals time, tactical repositioning, and continual assessment, all of which are essential to de-escalating encounters with citizens in crisis.
- The Academy should expand the tenets of ICAT in its training so that it becomes an expected action to emphasize de-escalation whenever an officer interacts with the public and there is a possibility of a confrontation. Including these efforts in role-playing exercises and case studies will help embed the principles of de-escalation into the culture of APD.
- **Verbal Communication and Public Interaction**. This course is a state-mandated course pursuant to BPOC, Chapter 25. Kroll reviewed the lesson plan for this course, which is a sixteen-hour de-

[224] The Academy curriculum includes other de-escalation scenario-based role play training in the following courses: CIT (4 hours), Verbal Communications and Public Interaction (16 hours), and Basic Taser training (1 hour), which combines for an additional 21 hours of de-escalation training. In combination with the 10-hours of ICAT training, the Academy provides a total of 31 hours of de-escalation training.

escalation course focused on teaching cadets to effectively communicate when interacting with members of the public. The entire course is devoted to communication skills that are intended to de-escalate encounters with members of the community in an attempt to avoid using force and defusing other situations. The crucial components of paralinguistics, kinesics, and empathy are discussed.

- **Taser Basic User Course**. This is an eight-hour course on the use of the Taser Conducted Electrical Weapon (CEW) that incorporates four drills and four scenarios and includes one hour of de-escalation training. The course provides operational theory and practical training to safely and effectively operate the issued CEW. The course is completed in its entirety using training materials provided by Axon International (Manufacturer).

5.10 Non-English-Speaking Residents and Persons with Disabilities

In addition to training cadets on Law Enforcement Survival Spanish, which was discussed in Section 5.4, the Academy makes cadets aware of the additional resources available to officers to assist in interactions with non-English speaking residents. For example, when interacting with a resident who speaks a language other than English, officers can send out a city-wide dispatch for assistance with the particular language at issue and an available interpreter will respond to the scene. If there is not a bilingual officer available who can assist, an official interpreter can be requested from the city's Language Line, which will immediately dispatch an interpreter who can help translate. Certified court interpreters are also available when needed by investigative units. This information is supplemented and detailed in APD General Order 609.2 and was confirmed in Kroll interviews.

The department also offers an internal stipend program that will pay for officers interested in learning additional languages other than English (including American Sign Language). The program tests for proficiency and compensates officers who become bilingual.

Additionally, as noted in Section 5.4, the Academy teaches a course on interacting with deaf and hearing-impaired individuals in traffic stops and other scenarios. The course discusses the variety of communication aids and services that are useful to law enforcement in communicating with deaf individuals, including the videophone, video relay service (VRS), and video interpreting service (VIS), which allow deaf or hard of hearing individuals to communicate over video telephones and similar technologies with hearing people in real-time with the aid of a sign language interpreter.

Cadets are trained on how to distinguish what situations require an interpreter and how to handle certain calls that involve deaf or hearing-impaired individuals. They also learn about all current APD policies that pertain to interacting with the deaf community.

Training on communicating with persons with disabilities is covered in the 40 hours of Crisis Intervention Team training concerning interactions with residents who have a mental illness/disability.

5.11 Field Training Officer Program

The APD Field Training Officer (FTO) Standard Operating Procedure (SOP) comprehensively addresses the criteria and method for selecting FTOs, the training provided to perform their duties, supervision, evaluation, the length of time trainee officers spend in the program, and the methods by which FTOs assess and evaluate trainee officers in the field.

APD Field Training Program. The APD Field Training Program (FTP) is a 15-month education and evaluation program. At present, the department is authorized 152 FTO positions. FTOs are considered role

models for their trainees. To be selected as an FTO, an officer must complete a minimum of 24 months continuous time as an APD commissioned officer on patrol. (Officers that graduated from the Modified Academy or those with a minimum of two years of prior law enforcement experience from an accredited law enforcement agency may qualify as an FTO after 18 months continuous time as an APD commissioned officer.) FTOs are to teach respectfully and professionally and may not have trainees do any activities beyond the normal scope of their duties, and the department prohibits FTOs from requiring trainees to conduct tasks as a "rite of passage" or "initiation."

Selection Procedures. Each level in the FTO applicant's chain of command is responsible for the selection and approval of the applicant as an FTO. To be selected, FTO candidates are required to demonstrate their commitment to community policing, as well as their problem-solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts, and commitment to APD philosophy are the primary criteria in the selection of FTOs.

Excessive numbers of complaints (sustained and not sustained) or use-of-force incidents shall bar a candidate from selection as an FTO for no less than two years. Sustained disciplinary action against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based discrimination or slurs, or other serious examples of police misconduct, shall result in termination from the FTO program.

FTO Training. The following Training is mandatory for selected FTO's: FTO Advanced Training completed each calendar year, FTOs that complete the APD Basic FTO School (School) are exempt from the FTO Advanced Training for the same calendar year that they complete the School.

FTO Surveys. FTOs may elect to participate in the FTO 360 survey and/or FTO Exit survey. The 360 survey is anonymous and intended to provide information directly to FTOs who want to improve their performance and skills. Survey results are not shared with anyone except the affected FTO.

Staff Inspections. Annually, the Field Training Unit cooperates with the Inspections Unit of the Professional Standards Bureau when they perform a staff inspection. The purpose of the staff inspection is to compare APD's formal expectations with the actual performance of the Field Training Unit to determine if APD policy and SOPs are being followed.

Incentive Pay. Candidates that are selected to participate in the FTO program receive a pay stipend as a financial incentive, in recognition of the fact that becoming an FTO adds significant responsibilities to an officer's job duties. However, several officers Kroll interviewed indicated that the stipend for being an FTO does not adequately compensate officers for the added responsibilities. Most officers who become FTOs do so primarily because they want to contribute to the development and training of new officers.

Neighborhood Portfolio Exercise. Throughout the Field Training Program, trainees are to develop a detailed geographical, social, and cultural understanding of the area to which they are assigned. This Neighborhood Portfolio Exercise is designed to give the trainee a sense of the community where they work. It also encourages the trainee to develop community contacts that are critical when practicing community-oriented policing and problem-solving initiatives.

Returning Officer Program. Officers that have been rehired by APD or who return from an extended period of leave (e.g., military deployments) are assigned to the Continuing Education Unit's Returning Officer Program. This requirement only addresses the need for updated training and not any de-programming from military service. For example, there is no provision for mental health evaluations or other services prior to returning to full-time police service (officers can deploy several times). Common mental health symptoms of combat veterans include PTSD, anxiety, sleep problems, depression, withdrawal, and isolation aside from physical injuries. If not appropriately addressed, these frequently unnoticed symptoms

can translate into significant issues of concern for the department regarding officer conduct and interactions with the community. To address this, Kroll has included a long-term recommendation that addresses returning military veterans and recruiting from the military.

Evaluation. Overall, APD's FTO Program is well structured and documented. However, to further strengthen the program and address several of the concerns raised by the City of Austin and the community concerning the FTO Program, we have included some additional long-term recommendations, which are outlined in Section 7 of the report.

Kroll also notes that ***Section .06, Sub-section C, Paragraph 10*** of the SOP appears incomplete ("No Internal Affairs records of sustained violations that reflect any form of ethical misconduct, and" . . .) and should be corrected.

6 COMMUNITY FEEDBACK

During the course of our assessment, Kroll spoke with community leaders and activists associated with the following organizations:

- Just Liberty
- NAACP
- Austin Area Urban League
- Austin Justice Coalition
- Texas Appleseed
- MEASURE
- Greater Austin Crime Commission
- Community Police Review Commission
- Community Video Review Panel

We also presented our preliminary findings before City Council on March 2, 2021, and before a community forum put together by the Office of Police Oversight on March 23, 2021, which was attended by approximately 50 participants. A number of common themes and comments were provided by the community members we spoke with, including the following:

Community Engagement

- APD is a fairly standard representation of its species in a community that has been migrating towards a very different view of what public safety looks like – there is a widening gap between APD's view of the department vs. the community's view of the department.
    - APD tends to dig in its heels to standard practice and resists calls for reforms.
- The department needs to continue the work of community engagement – a lot of officers want to do good. There needs to be a dialogue with community members that are willing to work with APD on it.
- We do not like the term "re-build" trust – because there was never any trust built between the police department and the Black community.
- APD needs a diverse academy with community involvement, with all groups represented – Black, Brown, women, etc. The department needs to train people on cultural competence – but this is not currently happening. The "groundwater is muddy" – we need transformational change.
- APD shows "no respect and no interest in community policing as it pertains to non-white bodies."
- There are solutions that community partners could offer to APD. But APD should initiate them, so it doesn't look like we are shoving it down their throats. The community can only force it so far.
- There was a stark difference between the community outreach that occurred under Chief Manley vs. Chief Acevedo. The way Chief Acevedo interacted with the community seemed more accessible and approachable, which resulted in more grace from the community.
    - Chief Acevedo did more to engage with the Latino community.

- APD tends to have better conversations with the community when they go out into the community (e.g., coffee conversations, etc.) rather than when the community comes to them. But the community does not always engage in these activities because of a lack of trust.
- It is important to recognize where Austin is in terms of change – more community policing will not necessarily solve the problem (mental health, homeless population). We need to divert calls involving mental health issues and social problem from police to other agencies.
- The whole reimagining policing process is happening now – Chief Manley was not willing to do this. We need someone willing to think outside of the box. It is very difficult to talk to someone who is not willing to examine the causes of police mistrust.
- The need for policing is not what it was when the 21st Century Task Force was drawn up. We need to get to a point where communities are healthy, and we need policing less and less. This is part of the ongoing conversation we are having in Austin.
- The Community Video Review Panel was pleased to learn that APD had accepted the Panel's video recommendations, but they want broader change and are tired of dealing with only surface-level changes.
- The Panel agreed that a formal structure to review the Academy's other training videos, as well as course content, should be established moving forward.
- More community engagement is needed as part of police training – the Academy's recent level of community engagement was virtually non-existent.

Cultural Competency

- APD needs to be "culturally responsive" – cultural responsiveness is not part of their training division. "Either you are teaching diversity, equity, and inclusiveness (DEI) or you are not – and they are not."
- There are a lot of cultural issues with the APD and the City of Austin. The Training Academy does not communicate well with different cultural organizations.
- We have to be able to screen out bigotry and white supremacy.
- For any sort of anti-racist training to work, you must examine the sustainability of that model and make sure that you revisit it – "a one-off doesn't work." You must revisit with similar types of training, taught by different individuals with experience in diversity and inclusion – this is bigger than just Austin. The mentality has to change, and it has to seep into law enforcement.
- The History of Race and Policing in America is a good step forward. It is important that all officers understand these issues. Some of this information may be "painful" but it is important for people to understand how their privilege (or lack of privilege) impacts everything. But such a course and its content need to be revisited annually so it can be sustained and impactful in the long run.
    - Police forces were historically developed to protect white interests.
- There should be requirements for annual training that deal with issues of diversity, equity, and inclusion.
- The City has historically been "anti-Black" – although we are growing in numbers, this is not necessarily happening in the Black community, and it is impacted by the Black community's

relationship with APD. Part of this is economic and the high cost of living; but it also comes from perceptions that the City is not serving the Black community.

- Austin is one of the most economically segregated cities in the country.

Transparency and Accountability

- "Are you open to criticism when you write your curriculum?" APD has been very resistant to outside critiques.
- "You must teach officers to respect everyone" – this is a must to have credibility, accountability.
  - This can be a "win-win" – but APD must change from a warrior to guardian mentality.

Training

- The Academy needs to teach more ethics and do more scenario-based training. What do you do if you see an officer employing excessive use of force? Etc.
  - Cadets must learn that they are here to support and serve the community, not to control the community.
- In 2018, there was an Academy class that lost a large number of cadets to attrition; several former cadets testified during a city council hearing – it was atrocious and compelling testimony.
- There is a "core lie" that has been disseminated to the community – that the core curriculum required by TCOLE cannot be changed by law; APD contends they can add classes but cannot change the core curriculum.
  - "That is not true" – there is a baseline of things a student must know when they leave the Academy, but there is no reason APD could not change and adjust the core curriculum.
  - TCOLE had an old curriculum that still referenced reading lists from the 1980s; they rolled out a new curriculum in the last 1-2 years, but the last cadet class was still being taught under the old curriculum.
  - Even though the City of Austin temporarily closed the Academy, APD was going to have to redo its curriculum anyway, because the TCOLE curriculum was substantially changed.
  - How courses are taught, and how instructors connect the dots between the units, is something that can be done differently without impacting the essential course content. It is a form of insanity that APD continues to teach "into the problems".
- Academy uses fear-based training. The video review panel report is illustrative of this theme.
  - That APD teaches its officers to "fear the public" and that officers "need to come home safe" at all costs is a major problem. This approach conflicts with the need to teach communication and trust, real-life dynamics that officers will confront in their jobs.
  - Police officers spend most of their days involved in what is essentially social service work, which is much different than "fighting crime." There is a deep vein of racism that constantly reproduces the problem.
  - It has been a horrifying experience for the people serving on the video panel – to see how the community is perceived and represented in the videos.
- No one has said the Academy needs to be closed forever – but there needs to be a coordinated and public effort to ensure that true reform occurs (with transparency).

- Consistency in messaging is important. Historically, there has not been a lot of consistency in what is being said regarding how APD is training its cadets and how individual officers are instructed.
- Why is Austin so late at banning chokeholds? And what tactics are the department teaching in the Academy when officers encounter certain situations?
- There is a gap in training – a police officer's first response should not be to engage in detrimental violence. Violence should be a last resort. You need to bring in mental health professionals in many situations that officers are asked to address.
    - Military tactics – e.g., taking the high ground and surrounding the enemy in a combat situation. APD applies military tactics during peaceful protests against people who have perpetrated no violence against officers – violent acts against non-violent protestors. It all goes back to leadership and training.
- Some would suggest that the problem is not at the Academy but with the Field Training Officer program after cadets graduate.

De-escalation Training

- APD says that de-escalation is "sprinkled" throughout the training – but why not make it more intentional?
- Austin has a high rate of officer-involved shootings with people in mental health crises.

Police Culture

- It should be part of the culture of APD that they want to do better – this is not a revolutionary concept. They should have been doing more from the very beginning.
- We need to "change the culture of not just policing but our community" – presenting public safety as a means to achieve "whole, flourishing communities."
- How cadets view the community (and how they are taught) is crucial – they need to be true "peace officers" as well as "sentinels" – there are elements of both (guardian and warrior) in what police officers do.
- A pro-police community representative noted that the Academy stopped doing a number of "paramilitary-type things" years ago, and that APD is trying to evolve the Academy into a hybrid paramilitary/civilian format. But this representative acknowledged that there is legitimacy to much of the community concerns and criticisms, and the impetus behind the community's desire for a guardian vs. warrior approach. "We applaud the level of scrutiny that police training has been given and should continue as it progresses." APD has done a lot to improve procedures and tactics, but it is an ongoing process. During the protests last summer, APD learned a lot about less-lethal munitions, etc. – this is a process where they continue to make improvements.

Recruiting and Promotion

- APD's standards are too low for how they recruit officers initially; they should start with people graduating college with criminal justice and related degrees. There are too many examples of people being recruited who have racist instincts – this needs to be screened out (e.g. – that Justin Newsom made it to top leadership reflects on the type of people they are bringing into the department).

  - There are six HBCUs in Texas that produce over 100 criminal justice degree graduates per year.
  - The City should allocate some budget for scholarships at these schools in exchange for a 4-year commitment at APD.
  - Officers that come in with a 4-year degree are less likely to use force and more likely to productively engage with the community.
- Chief Manley had said he would bypass people when making appointments to leadership positions to increase diversity and accountability – but when he had the opportunity to do so, he used his optional bypass authority to promote people with little interest in increased accountability.
  - There remains a lack of diversity within APD leadership at the highest ranks. For example, unless there has been a recent change, there remain no Black Commanders.
- HR practices need to be looked at – inequity is built into the system.
  - If Black and Brown officers are not getting into the higher ranks, there is a problem of inequity.
- Even though APD officers have the option in many cases to give a ticket or citation vs. arrest, they are arresting Black and Brown people disproportionately.
- Chief Manley had become increasingly intransigent against council directives, and APD has essentially ignored council resolutions. “We have lost trust and faith in APD and the city’s ability to do anything about it.”
- APD should prioritize the candidacies of women – good outcomes come with female leadership.

Officer Discretion

- APD officers frequently ignore the body camera policy – officers often don’t turn the camera on or come up with other excuses (e.g., camera broke). “If we can’t trust officers to turn on their body cameras, how can we trust them on other things?”

Allocation of Resources

- The department needs to shift its approach and work with other agencies in certain situations – EMS, fire department, social workers – not every issue requires a traditional police response.
- The “core of everything” for reimagining policing starts at the training level.
- Several community members commented positively on recent changes to 911 calls – i.e., removing mental health calls from APD’s function – this is a step in the right direction.
- As of June 2020, APD had successfully diverted hundreds of calls from 911 police response to other agencies (80-85%) – but in that same period, there were over 3000 calls to 911 with a mental health component. The police do what we ask of them – which, unfortunately, is everything.

Reimagining Public Safety Task Force Feedback

Task Force Member Brion Oaks motioned to have a level of demonstration or proof from APD that the various areas have been addressed in the Academy, including:

- The killing of residents by police (use of force issues) [This issue will be addressed in Phase B of Kroll’s evaluation].

- The graduation rate for Black cadets and rate of disproportionate injuries to Black cadets in the Academy [This issue is addressed in Kroll's report].
- The overall injury rates in the academy training [This issue is addressed in Kroll's report].
- Addressing the video curriculum issues [This issue is addressed in Kroll's report].
- Racial profiling (stop, searches, arrests) [This issue will be addressed in Phase B of Kroll's evaluation].

Questions from March 23rd Community Forum

During the community presentation and forum that was hosted by the Office of Police Oversight on March 23, 2021, there were a number of insightful and engaging questions presented to Kroll concerning its preliminary findings and recommendations. The questions are reproduced below. Kroll's initial attempts at answering these questions can be viewed at the following link: https://www.austintexas.gov/blog/community-provides-feedback-apd-recommendations

1. *Did you interview people with lived experience with the police?*
2. *Can you define "adult learning?"*
3. *Will integral care be integrated?*
4. *What were the orgs under refugee and immigrant outreach?*
5. *There was a statement indicating that the recruiting unit has "significant diversity" and the numbers showed 17% female members, and 83% male members. How is the identified as "significant diversity"?*
6. *How many weeks of crisis intervention training are considered "best practice"? What are examples of cadet academies nationally that institute those best practices?*
7. *Can you speak a little more to the "warrior" and "guardian" discussion, and how a department can maintain a 30% warrior without over emphasizing the most unusual situations and undermining how officers behave in common interactions or in first amendment protected activity (where the vast majority of folks are peaceable).*
8. *If this report is preliminary, what has yet to be reviewed and finished before the full report comes out in April?*
9. *To what extent, if any, will the academy incorporate the principles of the Center for Policing Equity in its training?*
10. *Why has the length of the academy been shortened?*
11. *Does Community Policing fit into your recommendations?*
12. *Will no knock raids be either eliminated totally or at least eliminated for drug related cases?*
13. *Will the instructors that have perpetuated the militaristic US V. THEM mentality be removed and replaced with instructors that have demonstrated ability to train in the reimagined ways?*
14. *Which recommendations related to the academy and to the department, as a whole, would you all say would need to be solidly in place before Kroll would feel confident about the training academy resuming?*
15. *Are there any vestiges, even subtle, of the Grossman "killology" school of police training in the academy curriculum? If so, is there an active plan to remove them?*
16. *New cadets are the people with likely the least power in the department. What measures will be taken to ensure that this training translates into long term change in the department when new cadets will be poured into an academy culture that has been built on an entirely different framing of training*

and operating. How can we have faith that the changes will be welcomed by those who have been operating in a completely different modality?

17. What will be done to ensure that 'diversity' includes people with disabilities?

18. What consideration has been given to the vetting and retraining of all current officers before having a new cadet class, so that they don't undo any positive training new cadets receive?

19. Are the Beyond Diversity/Groundwork trainings short term trainings or ongoing investments in change within the culture, and are they department-wide, or just for cadets?

20. The report indicates that Kroll found "APD reluctant to incorporate a lot of community/civilian input and distrustful of non-police personnel." Given this culture, how can community input be meaningfully incorporated if there's a culture of mistrust of civilians?

21. Why do you not include other identities when mentioning "diversity"? It is not just race or gender.

22. Other countries have police "universities" that take 1- years to complete. Any thoughts to aspiring to a model like that?

23. Will existing trainers and educators in the Academy go through a long-term retraining on the new curriculum before engaging in leading trainings again? How will their success in incorporating the training be measured?

24. What is the relationship between transforming training and making significant changes to general orders and other systems of accountability for racial profiling, violence, and other misconduct?

25. Does the academy solely train officers for APD or do smaller agencies throughout the region send cadets here, too?

26. Many of us have experienced this reluctance directly. Do you believe that accepting community input can produce better curriculum?

27. How many people that have been arrested by APD did you involve in this assessment?

28. Does the academy address the issue of officers not feeling comfortable reaching out for psychological help, out of fear of stigma/damage to career?

29. Can an assessment of the Academy truly be complete without completing all phases of the evaluation since instructors and culture play such a huge role in how the cadet class is incorporated and led into the larger department?

30. Will all the phases of your evaluation and recommendations be complete before the council makes a decision on timing for the next academy class?

31. How long will the Academy be trained in "Adult Learning" before implementing a new cadet class?

32. you speak to the lived experience with arrest, detention, and/or incarceration of any of your advisory experts?

33. Will academy curriculum reform efforts also examine how disability is treated? There is a federal lawsuit by a deaf person alleging he was mistreated.

34. How will any cultural changes within the department be measured and determined and who will be making those determinations?

35. What outreach is being done to the Austin Texas disability community to build and maintain community policing?

36. How was the time period of two weeks chosen for the program for cadets to immerse themselves into the community? How would this work logistically? how would they be immersed into community programs and organizations?

37. What is the relationship between transforming training and making significant changes to general orders and other systems of accountability for racial profiling, violence, and other misconduct?

38. Will all the community questions here be catalogued/archived for reference by the City?

39. *Will the answers to all the questions in the chat be made public?*

40. *How much time do cadets in training watch body cam footage of interactions gone wrong?*

41. *If the goal is to completely transform the impact that police are having on the community, how can we move forward if the recommendations do not yet include the perspectives of community members who have been most directly impacted by policing in this process? For example, the statement made earlier that immigration is a separate issue from policing completely ignores the impact that the threat of deportation from any arrest has on immigrant communities. I share Melissa's sentiments made above and have also spoken with many people who have experienced trauma and life altering harm from interactions with police, and not exclusively around mental health issues. System transformation significant enough to address these issues cannot even begin to happen within a period of two months.*

42. *How can a cadet class begin before the phase about accountability measures? As one community member pointed out in a Reimagine Public Safety Task Force meeting, an officer who got angry and confronted the Chief during a city council meeting would not be keeping his job, but officers who kill and maim community members have consistently kept their jobs. If cadets come into a department with this culture without changes in accountability policies, and learn from officers currently in the field, how will they get the message that these kind of interactions with the community will not be tolerated?*

43. *Given that we're reallocating funds and roles, how can a shortage of police right now be more urgent than getting the transformative change pieces in place in APD first?*

Community Feedback on Reimagining Public Safety Task Force Website

On March 16, 2021, the Reimagining Public Safety Task Force published an abbreviated list of Kroll's preliminary short-term and long-term recommendations and sought community feedback and input on those recommendations. The recommendations listed were articulated as follows:

SHORT TERM RECOMMENDATIONS

1. *Transition to a blended civilian/police academy.*
2. *Create an academy curriculum review committee that includes community members.*
3. *Formalize the process for review of videos shown at the academy.*
4. *Create a model for academy and expert community subject matter experts to teach courses together.*

LONG TERM RECOMMENDATIONS

1. *Develop strategies to enhance long term racial, ethnic, and gender diversity of academy staff and faculty.*
2. *Implement two-week community engagement program for cadets.*
3. *Provide continuous de-escalation training for cadets and current officers.*

Many of the comments submitted were once again insightful and thoughtful. Although some of the comments suggested that the commenter was unaware that the list of recommendations posted included only a small number of the total recommendations and that Kroll's assessment was still underway, most comments were positive on the recommendations provided but noted correctly that many other factors must also be considered. The following link provides all of the comments posted:

https://www.speakupaustin.org/reimaginingpublicsafety/forum_topics/apd-training-academy-recommendations

7 APD TRAINING ACADEMY – RECOMMENDATIONS

As noted in Section 5, the APD has implemented a number of changes to address issues previously raised by the City, the community, and independent consultants. The Academy has made significant strides in diversifying its leadership and instructors to better reflect the community APD serves, although it has more work to do at the instructor level. The group of leaders and instructors presently at the Academy are highly professional, passionate about what they do, and genuinely interested in making the Academy a best-in-class institution.

That said, APD historically has been reluctant to incorporate adult learning theories and modern teaching methods into much of its course content, and an even stronger reluctance to change the paramilitary nature of the Academy in any fundamental way. As noted in Section 6, the relationship between APD leadership and certain segments of the community remains tense and broken, with several community activists expressing an unwillingness even to engage with the former Chief. As with many police departments across the country, the police professionals feel like they are under constant attack and not given credit for much of the good work and public service they do, while the many and varied community voices most engaged in criminal justice and police reform efforts feel disrespected and unheard.[225]

But there are moves in the right direction. First, creating the Organizational Development and Training Manager (ODTM) position, so that an educational expert can review the curriculum and work with instructors to develop ways to incorporate creative adult learning strategies into the training, was a proactive, positive initiative that should pay long-term dividends. Moreover, making the new ODTM a Division Manager, if backed by leadership, will help transition the Academy into a true adult-learning educational institution. Second, the collaborative work between APD and the Community Video Review Panel, while difficult and turbulent at times, ultimately produced an excellent example of police-community collaboration that can and should form the foundation of future relationship building between APD and the citizens it serves. Kroll knows of no other academy in the United States that has evaluated its training videos for instances of bias and inappropriate content in this manner. Third, adding 30 hours of community input and participation in cadet training, and the addition of course content such as The History of Policing and Race in America to be co-taught by a locally-based subject matter expert, further demonstrate a commitment by APD to improve its community relationships and train cadets in a manner more attuned to the community policing, guardian model that the City and the community desire.

There are additional and necessary measures to be addressed in the short run, including teaching methods and incorporation of adult learning strategies, substantive course content, community engagement, input and participation, and increased use of civilian content experts. Other more fundamental issues, such as significant changes to Academy culture, philosophy, shifts in attitudinal thinking, and tackling long-term racial and gender inequities and issues of systemic racism, are matters that require a longer-term strategy and commitment. Although some improvements to culture and philosophy can be made in the short run with existing leadership, fundamental change cannot realistically be expected to happen overnight.

For these reasons, we have divided our preliminary recommendations into short-term and long-term measures, as noted below.

[225] Kroll notes that former Chief Manley had expressed to Kroll a willingness to engage with the community despite resistance from some vocal community activists. Additionally, the Acknowledgement section of the Joyce James Consulting Report commended the willingness of the Chief and his command team, and other sworn and civilian staff, to engage in open and honest dialogue that her team facilitated about institutional and structural racism. This would appear to be a step in the right direction for APD to begin honestly addressing racism institutionally.

KEY RECOMMENDATIONS

7.1 Short-term Measures

To begin addressing concerns expressed by the community and the findings, analysis, and recommendations of the reports and assessments conducted to date, and based on our best practices research in Section 4 and our findings in Section 5, the following steps should be completed before the start of the 144th cadet class:

1. It is imperative that the new Division Manager have a clearly articulated mandate to lead Academy instructors in (a) incorporating adult/active learning models throughout the Academy – specifically as to the DEI-related courses examined in this report and in Dr. Ferguson's Level I and II recommendations in his April 2021 report, and (b) implementing the recommendations of Dr. Villanueva's Review Analysis and Strategic Plan report of May 2020, pages 10-11. While we commend APD and the City of Austin for hiring Dr. Anne Kringen as a Division Manager to replace the prior Organizational Development and Training Manager, we learned that there was significant friction between sworn Academy staff and the ODTM position this past year. APD leadership needs to make clear that Dr. Kringen speaks on behalf of leadership.

    - At the same time, APD Command staff needs to accept ultimate responsibility for implementing these recommendations and transitioning the Academy to a resiliency-based training model. This is not something that can be delegated exclusively to the Division Manager.

2. The Academy should also, as soon as practicable, hire and onboard a Training Supervisor to work with the Division Manager in updating and standardizing curriculum and support materials to better reflect adult and active learning strategies. This added position will eventually help transition the Academy to a blended civilian and police-led training academy with outside civilian instructors and APD Academy instructors teaching cadets individually or jointly as appropriate for the course content.

3. APD should expedite the procurement process to begin implementation of an automated Learning Management System (LMS) that will facilitate better organization of course materials, allow for more efficient curriculum planning (including updates and modifications) for current and future cadet classes, ensure accurate TCOLE and BPOC planning, and make it easier to transition to new instructors when staff leave the Academy. As noted by Dr. Villanueva in her May 2020 report, a reliable LMS will allow the contents of every course, including lesson plans, lecture slides, video clips, assignments, activities, exams, collaborative work, and grades, to be securely stored in one place and made accessible to anyone with the proper credentials. The use of this technology is a best practice in police training academies across the United States. APD should set as a goal full implementation of an automated LMS prior to the start of the 145th cadet class.

4. The Academy should formalize an internal review committee responsible for reviewing each instructor's syllabi and curriculum and suggesting ways to improve each class in the Academy. (We understand that Dr. Kringen is currently forming an Academy Curriculum Review Committee for this purpose). The committee should include the new Division Manager and soon-to-be-hired Training Supervisor, along with selected Academy supervisors and instructors, and outside academic and community representation. The panel could start with reviewing and evaluating video presentations of the training that is intended to be presented to the next cadet class.

- With the assistance of the Division Manager and the Training Supervisor, and in coordination with the Commander and Academy supervisors, all course content, including courses taught by the Learned Skills Unit and Cadet Training Unit, need to be evaluated for ways to incorporate DEI content into all aspects of training. The current siloed approach, which essentially isolates DEI courses from police tactical training, should be modified to ensure consistency of messaging and a fundamental emphasis on the humanity and complexity of the citizens APD serves and protects. "Checking the box" once a course is completed needs to be resisted. Teaching about multiculturalism and the importance of community relations in week one will be undermined if we then train "warriors" to counter all threats in later weeks. All courses should be reinforced, formally and informally, throughout the cadet training program.
- Cadets must be thoroughly and effectively trained on all proper defensive tactics, arrest and control techniques, crowd control, and so on. But the messaging throughout the Academy needs to consistently emphasize the ethical responsibilities of policing, teach a sensitivity to legitimate community fears that are based in history, and recognize the complexity and nuance of the human beings that cadets will interact with daily. Cadets must understand that more than 95% of day-to-day policing is more akin to social services than policing. The single most important skill that a police officer can develop is the ability to effectively interact with and relate to a diverse community of people in ways that are honest, authentic, and transparent. Implicit messages, whether from training videos or course content, suggesting that certain people or neighborhoods are more "dangerous" than others, must be resisted and countered.

5. APD should put in place a formal process to continue a community review of police training videos that were not reviewed previously by the recently concluded Community Video Review Panel. Once a process is formalized, ongoing consultation should occur between APD and the community panel concerning any new training videos proposed for use in future training courses to ensure that full community input is embedded into Academy planning and implemented in training. It is important, however, that videos are reviewed in the context in which they are to be taught, and not in isolation. To accomplish this, the panel must have the benefit of one or more instructors to explain how the video is intended to be used and in what context.

6. "Will-to-Win" (previously known colloquially as "Fight Day") should become a highly-regulated "Self-Defense" exercise near the end of Academy training, after cadets have been properly taught and tested on all appropriate defensive tactics, hand-to-hand encounters, and similar tactics.[226] This "Self-Defense" session should be video recorded (for internal review only) to ensure that appropriate levels of force are being used by the assigned instructor according to Academy protocols. We understand and agree with the need to prepare cadets for aggressive and hostile encounters, but "Will-to-Win" sends a message that implicitly affirms the "us vs. them" mentality that must be eliminated. It is one thing to properly prepare cadets for certain types of encounters and giving them the tools to protect themselves, but another thing to message that the object in hostile encounters with a member of the public is to "win" – which implies that someone must "lose." Officers must be trained on how to properly protect themselves and others, but proper messaging is crucial to ensure that the training exercise does not overtake the fundamental purpose of policing.

[226] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

- Kroll recommends a defensive tactics program that has cadets learn the basic skills starting early in the Academy, where cadets work with instructors and other cadets to learn proper defensive tactics before they are tested near the end of training, either with a controlled/supervised period of time in a ring or other scenario-based training. This will assist in team building and allow cadets to learn and build the skills to succeed.
- APD spends hundreds of thousands of dollars to recruit and conduct background investigations of cadets. Accordingly, every effort should be made to have cadets succeed by giving them the tools to do so. To reduce injuries, self-defense testing and challenges should occur after fitness training when recruits are warmed up and stretched out.
- Ensuring use of the phrases "defending oneself" and "self-defense" will also help address the "warrior vs. guardian" issue.

7. The use of the sandpit and having cadets carry sandbags as punishment for "messing up" should also be modified or eliminated.[227] The shift from stress reaction training to team-building exercises is a positive development; team-building exercises are important and necessary, as are physical fitness and conditioning. We understand that there is a certain level of physical and psychological stress associated with policing and with training. But the old-school manner of incessantly yelling and screaming at cadets, and other humiliation tactics, serve little purpose other than to instill a military-like, bootcamp atmosphere that is counterproductive to preparing officers to serve as guardians of the community.
8. The Academy should expand its physical fitness training to a daily regimen and this training should be separated from all academic content – except for physical training associated with self-defense and other defensive tactics.
    - Physical fitness, team building, and applying stressful situations to cadets should be completely separated from any academic training. Having cadets do extra pushups, sit-ups, and other exercises while properly attired in athletic gear during formalized physical training programs (when cadets have properly stretched and warmed up) will reduce injuries. The academic learning environment should be free of physical and unnecessary psychological stress. The rigors of learning coursework are stressful enough. Instead of carrying around sandbags for mistakes or shortcomings, for example, cadets could be required to write an administrative report about their failure and how they plan to address it. This will incentivize cadets to correct their mistakes while helping develop the skill most officers will spend considerable time doing throughout their careers (writing reports), while also documenting a non-subjective review of the cadet's progress.
9. As part of its community engagement programming, the Academy should proactively reach out to a wide variety of community leaders and activists who are willing to work productively with APD in presenting genuine community perspectives and concerns about public safety. This should include some of the department's harshest critics and other community voices with which APD has not traditionally engaged in active dialogue. This sort of community participation can be a mutually beneficial exercise that begins to slowly break down barriers of communication and enhance the learning experiences of the cadets. It is important to include the voices of some of the department's harshest critics among the invited participants in this programming.

[227] APD leadership informed Kroll on February 3, 2021, that this recommendation will be implemented.

10. To its credit, the Academy has scheduled "The History of Police and Race in America" that includes a specific focus on Austin into the 144th cadet class curriculum and is in the process of arranging for a locally based subject matter expert to co-teach the course with an African American APD sergeant. APD should ensure that the course covers the content outlined in the OPO-approved curriculum and is reinforced in other courses throughout the Academy.
11. The Academy should explore ways to implement additional community outreach and immersion strategies, such as having cadets spend time in a food pantry or homeless shelter, attend community meetings out in the neighborhoods, meet with local community leaders, and spend time visiting mental health and substance abuse programs.
12. The Academy should thoroughly review all other DEI-related courses and determine which may benefit from an outside, more academically oriented civilian content expert or a community perspective. Most of the DEI courses can be taught more effectively pursuant to a co-facilitation model that includes input and perspectives of civilian instructors or community members in the design and delivery of the training. These courses should be co-taught by APD instructors in cooperation with appropriate subject matter academic experts or community allies who can provide direct community examples, round out perspectives, and foster valuable community partnerships. It is important that the people presenting in these courses have credibility with both the community and law enforcement.
13. APD should tap into the resources of its existing officer base to temporarily assign some diverse officers of exceptional skills to assist with Academy instruction, particularly in courses where a diverse perspective would be beneficial and worthwhile (one of the recurring criticisms of the cadet surveys conducted by Dr. Ferguson was that the Academy often had non-diverse instructors teaching classes like multiculturalism and cultural diversity). For example, there is currently a diverse pool of officers in the Recruiting Unit who know and have existing relationships with cadets and who, with some additional training, could potentially supplement training staff and enhance the diversity of instructors teaching these courses.
    - Academy instructor recruitment could also be expanded to target experienced instructors from other police departments and talented individuals from local community organizations. Emphasis should also be placed on recruiting women, members of ethnic minority groups, and other underrepresented populations. This would help the Academy assemble a faculty that better resembles the demographic background of cadets and the diverse community the APD serves.[228]
14. The Academy should incorporate anti-racism and cultural diversity training into the Academy curriculum and as part of annual training for Academy instructors and supervisors (and eventually all officers). There are several valuable workshops and programs that could be utilized, including Beyond Diversity by Dr. Glenn Singleton and the Groundwater Analysis training workshop by Joyce James Consulting LLC that some APD leadership and Academy staff attended in 2020.
15. The Academy should reinstitute the practice of following-up with a cadet who leaves the Academy for any reason. The recruiter who had developed the relationship with the cadet might be able to identify an opportunity for the cadet to return to the Academy in a later class if circumstances allow. It also provides an opportunity for feedback to identify any changes needed in the training or recruiting process to ensure future success.

[228] Dr. Miguel Ferguson, Austin Police Department Training Academy Curriculum Review (April 5, 2021), 8.

16. The Academy should develop a mentorship program for all cadets, especially recruits of color, that will provide additional support for cadets and help them succeed at the Academy. These efforts would assist Commander Johnson with her stated desire to see Academy staff become more supportive and encouraging in helping all cadets succeed.
17. The Academy should revise the lesson plans and course content addressed in our review and recommendations of courses related to cultural competency training on pages 55 to 66 of this report, as well as the related Level I and II suggestions contained in Dr. Ferguson's curriculum review report of April 5, 2021.
18. The City should require an ongoing, independent review of the Academy by an outside evaluator once the 144th Academy class begins to ensure implementation of the above recommendations and to help ensure that further adjustments and improvements are made moving forward.
    - Kroll understands that many would like to see a completely revised training program that has addressed all issues before another class starts. We caution, however, that until instructors are actively training recruits, it will be difficult to fully assess whether the changes and recommendations currently being made or adopted are sufficient.

7.2 Long-Term Measures

To address some of the cultural and attitudinal concerns expressed by the community leaders we spoke with, and as outlined in the Community Video Review Panel report, Equity Assessment report, and the other consultant reports addressing APD training, we recommend the following:

1. To build on the positive collaboration between APD and the community in evaluating for bias and other inappropriate content in APD's training videos, APD and the City should consider working with a professional media literacy educator to help develop effective teaching videos moving forward that will have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy, and behavior. While it's one thing to analyze what one sees and hears, it's another thing to develop effective teaching videos as tools to undo ingrained bias, worldviews and attitudes that we all are born into, and how we have come to "interpret" living realities. It will take real knowledge and skills to overturn what is so embedded in the recruits that come to the Academy. This will be true regardless of race, gender, or class status.
2. APD should develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level, to increase the number of African American, Hispanic/Latinx, Asian/Pacific Islander, and female instructors assigned to the Academy prior to the start of the 145th Academy.
3. Academy class schedules should be revised to eliminate 40-hour blocks of course content to such things as Penal Code, Traffic Code, and Arrest Search and Seizure. These courses should be spread out over the length of the Academy, so that no more than two to four hours per day, three days a week are devoted to these important, but often dry and legally important subjects. Cadets need the opportunity to study and absorb the material that is taught, with an opportunity to ask questions and be tested in a progressive, cumulative manner. A revised schedule would also help combine the different course learning objectives into scenario training, which can prepare officers to apply their knowledge to patrol duties on the street. This type of training schedule has been used by numerous academies successfully to increase cadet graduation rates in Boston and other locations.

4. Based on Kroll's initial review, we have learned that the physical fitness requirements at hire may not be predictive of the physical fitness requirements in the Academy, and the physical fitness requirements in the Academy may not positively correlate with the physical fitness requirements of police officers post-graduation. For example, we have been told that many female applicants pass the initial physical fitness test and many African American male applicants fail the initial physical fitness test, yet both of these groups seem to struggle with the physical fitness requirements at the Academy. We also understand that there are essentially no physical fitness requirements of police officers once they have graduated from the Academy. As such, further analysis and adjustments of these relationships are required to ensure that pre-Academy, Academy, and post-Academy physical fitness standards are consistent with successful job performance. These potential inconsistencies lend further credence to Kroll's suggestions about physical training requirements and sequencing at the Academy, although this will only partially address questions about the physical fitness required by APD.
5. The Academy should develop a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to officially starting at the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.
6. Although we understand that the ICAT training has been adopted by the department as required in-service training for all sworn personnel, APD should require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. Departments that have widely adopted and implemented ICAT in other parts of the country have seen a marked decrease in use-of-force incidents.
    - Up-to-date de-escalation training needs to be delivered department wide, reinforced through use-of-force policy, supported by field supervisors, and included as a component of use-of-force reviews. Without a holistic approach, training in the academy will be "undone" once cadets graduate and are in the field.
    - We also recognize the importance of the Community Video Review Panel (Panel) recommendations to this training. Some of the videos used in the Academy's existing ICAT training were offensive to the community because it reinforced stereotypes involving Black women and communities of color overall. PERF emphasizes that ICAT training is flexible and adaptable, encouraging that agencies be creative in how they incorporate the training modules into new or existing programs on de-escalation, tactical communication, or crisis intervention. Many agencies use different videos and scenarios that better fit within their organizational and community context. These videos could easily be changed without losing any training content.
    - The ICAT training provides comprehensive instruction on critical thinking, crisis recognition, tactical communications, continual assessment, and scenario-based training. As the Academy is in the process of implementing the Panel's recommendations regarding use-of-force videos, once there is a consensus among the Panel that the videos used are gender and racially appropriate, it will enhance the existing ICAT curriculum and provide an appropriate equity lens to APD officers during de-escalation training.
7. To promote instructor wellness and avoid burnout, low morale, and reduced job performance, there needs to be some recovery time built into the intervening period between cadet classes. We recognize police departments always strive to reach their complement of newly sworn officers, but

it is important to be mindful that instructors have little downtime from teaching between the end of one cadet class and the beginning of another (see Dr. Villanueva report, page 9).

8. Whereas studies have shown the effectiveness of procedural justice training programs (see Section 4, pages 17-18), APD should develop additional content to further emphasize the importance of procedural justice in its training. While the History of Police and Race in America covers historical abuses that have undermined public legitimacy, and while Professionalism and Ethics and Fair and Impartial Policing teach principles related to procedural justice, the Academy should consider covering these concepts in further detail, either by developing a separate course or adopting one already proven successful, like the Chicago Police Department's procedural justice training program.

9. While Kroll's analysis of APD's CIT training acknowledges the department's effort and successes in addressing concerns of inadequate responses to behavioral and mental health crises, APD should collaborate more extensively with outside mental health advocacy and treatment organizations to ensure a more holistic approach to mental health responses and allow responses to crises that do not involve law enforcement, whenever possible. Moreover, pursuant to the recommendations in the 2018 Office of the City Auditor Report,[229] the Meadows Institute Report,[230] and the University of Texas Report,[231] Academy training should increase its emphasis on reducing stigma of mental illness among officers and require regular refresher courses on CIT principles.

10. APD's General Orders on Duty to Intervene covers some basic tenets of peer or bystander intervention requirements. However, APD should continue research into effective peer intervention training programs like Ethical Policing is Courageous (EPIC) and Project ABLE (see Section 4, pages 24-25), and consider adopting these or similar programs to place a more thorough emphasis on the importance of dismantling 'the blue wall of silence'.

11. Whereas police training research has increasingly noted the importance of cognitive decision-making, emotional intelligence and regulation, and effective social interaction skills, Academy leadership should continue to research ways in which these topics can be covered in the Academy curriculum. We recognize that the Academy is already taking steps towards this end, investing in leadership training using emotional intelligence and updating psychological assessments according to up-to-date best practices.

FTO Program Recommendations: The following recommendations will serve to strengthen the FTO Program and address several of the concerns raised by the City of Austin and the community.

12. APD and the Academy should consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers. A common problem in many police departments is that, once certain practices are taught in the Academy, the new officer learns a "different way" of doing things on the street. This undermines what is taught at the Academy and compromises an academy's efforts in staying up to date with best practices and any positive reform measures implemented at the cadet training level.

13. To highlight the importance of the FTO Program and encourage the best candidates, additional incentives should be provided for participation as an FTO. Although officers who serve as FTOs

[229] Office of City Auditor, "APD Response to Mental Health-Related Incidents".

[230] The Meadows Mental Health Policy Institute for Texas, "Recommendations for First Responder Mental Health Calls for Service".

[231] University Texas School of Law Human Rights Clinic, "Human Rights Framework Regarding Austin Police Department Mental Health-Related Shootings".

are provided incentive pay for their service, the program should also include other incentives, such as special uniform insignias, administrative leave days, and priority when it comes to selection for training opportunities.

14. The APD Field Training Officer Standard Operating Procedure should be amended to require the Field Training Program Coordinator and Academy staff to conduct focus groups with randomly selected trainee officers midway through the field-training cycle, as well as upon completion of field training and again six months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties. The focus groups should be designed to elicit issues encountered in the FTO program and to ensure that inconsistencies in training are identified and rectified.
    - Example of Focus Group Session Finding: *During X focus group session, the trainees found issues/no issues or discrepancies between Academy training and their FTO training. Trainees suggested that the training program should include more use of force option scenarios, as well as a new scenario where the trainee completes the entire call, including detention, report, stop data, and use of force report.*
15. *Consistency of Training*: The results of the above-noted focus group sessions should be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, and the affected Deputy Chief. If it is determined that there are any substantial discrepancies between what is taught in the Academy and what is taught in the FTO program, a determination should be made as to which is correct, and either the Training Academy or the FTO program should make the necessary changes so that the desired training information is consistent. If the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program, the review group should determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group should be documented and the information provided to the Chief of Police.
16. *Recruiting and Re-commissioning Combat Veterans*: APD should develop a protocol for psychological debriefings that address issues faced by combat veterans returning from military deployments to help reintegrate them into their law enforcement duties. Additionally, the strategies and resources employed should be extended to recruits that were recently discharged from the military to assess their mental health suitability for police employment prior to an appointment to the Academy. These resources should be used to assist military veterans' transition from military deployment to civilian law enforcement duties and help reprogram them concerning the proper use of equipment and tactics in domestic, community policing environments. The International Association of Chiefs of Police, in collaboration with the Bureau of Justice Assistance, U.S. Department of Justice, has published a *Law Enforcement Leader's Guide on Combat Veterans: A Transition Guide for Veterans Beginning or Transitioning to Careers in Law Enforcement*, which is a helpful resource for law enforcement leaders.[232]

[232] https://www.theiacp.org/sites/default/files/2018-08/LeadersGuide_300dpi.pdf

8 APD IMPLEMENTATION / ACTION PLAN

On February 16, 2021, Kroll shared with the City and APD a set of preliminary findings and recommendations concerning our assessment of the APD Training Academy. Kroll's recommendations included a set of short-term and long-term recommendations, with the short-term recommendations to be implemented in time for the 144th cadet class. It was understood that the long-term recommendations would require additional time to implement, although they should all be achievable, or nearly so, by the start of the 145th cadet class.

The recommendations reviewed by APD in February, and presented to City Council on March 2, 2021, are largely the same as those outlined in Section 7 of this report. We have since added a short-term recommendation (number 17 concerning revising and updating Academy curricula on cultural competency training consistent with our comments on pages 55 to 66) and some additional long-term recommendations needed to (1) enhance the Field Training Officer Program and (2) close perceived gaps between Academy operations and national best practices in police training described in Section 4 of this report.

To its credit, APD leadership agreed to implement all of Kroll's recommendations. Meanwhile, Academy staff has worked diligently to begin implementing the recommendations. This has required substantial re-working of the course schedule for the 144th cadet class, which prior to Kroll's review was a planned 26-week training program that eliminated all but what APD deemed essential content to meet state mandated certification requirements and to train cadets on important tactics. The revised schedule details a 34-week program, which includes a two-week community immersion orientation program and 32 weeks of Academy training.

As a result, the planned Academy training program for the 144th cadet class now includes (1) 30 additional hours of community engagement programming (for a total of 37 hours), (2) a two-week community immersion orientation program, (3) a full day of Groundwater Analysis Racial Equity training for both Academy staff (prior to the start of classes) and cadets (as part of Academy curriculum), (4) a newly designed 8-hour course on the history of police and race in America to be co-taught with a local academic subject-matter expert, (5) near daily physical fitness training, (6) fewer week-long blocks of technical course content that will allow for more effective implementation of adult learning strategies, and (7) a formalized process of community input into, and academic civilian oversight of, training content and techniques to ensure that issues of racial equity and procedural justice are paramount considerations in all aspects of cadet training.

The below chart summarizes our present assessment of APD's efforts to implement and incorporate short-term recommendations prior to the start of the 144th cadet class, and APD's action plan and proposed timeline for implementing all recommendations (short-term and long-term) moving forward.

#	Short-Term Recommendations	APD Responses / Action Plan
1.	Provide the new Division Manager with sufficient authority and the backing of APD leadership to implement and incorporate adult and active learning models into Academy instruction and to implement recommendations on pages 10-11 of Dr. Villanueva's Review Analysis and Strategic Plan.	*Completed.* APD hired and onboarded Dr. Anne Kringen on March 15, 2021, and made her a Division Manager, a civilian equivalent to Commander. This was affirmed by Interim Chief Joseph Chacon and Assistant Chief James Mason on March 30, 2021 at a meeting with Academy staff. Dr. Kringen is currently working with instructors to update curriculum to include active learning strategies and content, with a plan to complete all updates before the start of the 144th cadet class. Dr. Kringen will report any issues directly to Executive Staff.
2.	Hire a Training Supervisor to assist the Division Manager in updating and standardizing curriculum according to the adult and active learning models.	*In progress.* Reclassification from a Training Specialist to a Training Supervisor was approved and finalized during the first week of April. APD has since posted the position and received 10 applications to date.
3.	Procure and implement an automated Learning Management System (LMS) by the start of the 145th cadet class.	*In progress.* Two vendors for LMS have been selected and are currently being evaluated by APD. A second round of demonstrations will be conducted by mid-April, after which a final contract will be negotiated. APD expects full implementation of an automated LMS by October 2021, prior to the start of the 145th cadet class.
4.	Create an internal curriculum review committee to evaluate current syllabi and curriculum for each class. a. Evaluate for ways to incorporate DEI content into all aspects of training. b. Ensure that messaging throughout Academy training consistently emphasizes the ethical responsibilities of policing and a sensitivity to community concerns.	*In progress.* Dr. Kringen is establishing an Academy Curriculum Review Committee and has provided Kroll with a preliminary list of committee members. The current list of confirmed and potential members includes two APD sworn personnel, two representatives from local academic institutions, one or two staff members of Victim Services, three community representatives, and one or two members of the Community Video Review Panel. The Division Manager is currently reviewing curriculum for DEI content inclusion. All classes will be reviewed prior to the start of the Academy, with a completion due date of May 31, 2021.
5.	Establish and formalize a process to continue the work of the Community Video Review Panel (Panel) to allow for regular community review and input into police training videos that were not reviewed previously.	*In progress.* All videos flagged by the previous Panel are in the process of being replaced if an alternative is available. Where replacement videos have not been identified, Dr. Kringen has been provided the authority to replace such instruction by other adult learning means. The previous Panel met with Dr. Kringen on March 31, 2021. Next steps included introducing Dr. Scott Bowman, who has agreed to serve as a new member, and finalizing committee members that want to stay on. The second Panel meeting occurred on April 20, 2021. The new Panel will meet regularly thereafter pursuant to the formal process. A panel member is also scheduled to meet with Academy instructors on April 28, 2021, to better understand staff perspectives.

6.	Replace "Will-to-Win" with a "Self-Defense" exercise near the end of Academy training. **a.** Institute a defensive tactics program early in the Academy that teaches cadets proper defensive tactics before they are tested in aggressive fight scenarios. **b.** Testing and challenges should occur after Physical Training when recruits are warmed up and stretched out to reduce injuries.	*Approved (to be evaluated).* "Will-to-Win" has been replaced by a "Self Defense" exercise that will occur after cadets have been fully exposed to defensive tactics instruction. The current schedule shows this exercise occurring in week 23. Cadets will have previously received training in all aspects of defensive tactics, as well as communication, de-escalation, and community engagement. The lesson plan will be reviewed by mid-April to ensure proper implementation of this exercise. APD will ensure to emphasize "defending oneself" and "self-defense" to address the "warrior vs. guardian" issue and will ensure that cadets are properly warmed up and stretched to reduce potential injuries. The course curriculum will be reviewed to ensure messaging is consistent throughout.
7.	Modify or eliminate sandpit and sandbag exercises and other military-style punishments.	*Completed.* This practice has been eliminated as of Feb. 1, 2021, per instruction of APD leadership.
8.	Expand physical fitness training to a daily regimen and ensure that physical fitness, team building exercises, and other physically and psychologically stressful exercises are completely separated from academic, classroom-based training.	*Approved in part (to be evaluated).* APD has agreed to separate academic training from physical fitness, team building and other physically and psychologically stressful training exercises, and to place all physical fitness activities on the calendar. APD has incorporated daily PT into the calendar for the first 12 weeks of Academy training and scheduled PT for 3 times per week in the remaining 18 weeks of training.
9.	Proactively reach out to community leaders, activists, and critics who are willing to work productively with APD to present genuine community perspectives and concerns about public safety as part of Academy training and community engagement programming.	*In progress (insufficient at present).* Academy staff, with the help of OPO, has identified a preliminary list of community groups that they believe could assist in this effort. Dr. Kringen has worked with Academy staff to proactively research potential community partners, identify points of contact within each organization, and reach out to the various points of contact by email. Starting on April 19, 2021, Academy staff began evaluating responses from each organization to determine willingness to participate and potential topics of discussion that can provide added perspective to cadet training or existing course content. APD plans to have the individuals/groups identified by the first week of May.
10.	Ensure "The History of Police and Race in America" course covers the content outlined in the OPO-approved curriculum, and that this and other DEI-related content is reinforced throughout the Academy.	*In progress.* The "History of Police and Race in America" has been added to the curriculum and discussions are ongoing to finalize arrangements for a local academic expert to co-teach the class. The Division Manager and Academy Curriculum Review Committee will review other courses to ensure the information taught is reinforced throughout the Academy. This review is to be completed by May 31, 2021.
11.	Implement additional community outreach and immersion strategies.	*Approved.* APD has added 30 hours of scheduled time to focus on community engagement programming, including outside speakers from community organizations. APD also plans to have

		cadets spend time in a pre-academy environment working directly with Recruiting and District Representatives to meet this recommendation for the 144th Academy, in partnership with community leaders and organizations. The program will be finalized by May 31, 2021.
12.	Thoroughly review all other DEI-related courses to determine which courses can be effectively co-taught by an outside civilian or academic content expert with an APD instructor.	*In progress.* APD is working with the Equity Office and APD's Equity Manager on several areas of the Recruiting and Academy process. Dr. Kringen is working with Meme Styles of Measure to create a data course with APD's research and planning team. Other academics have been consulted to co-teach. These steps should be finalized by May 31, 2021.
13.	Use existing officer base to temporarily assign diverse officers of exceptional skills to assist with Academy instruction to increase diversity of Academy staff.	*On-going.* The Academy has reached out to the different affinity groups to help recruit qualified and diverse officers to fill the vacant positions as they occur. This will be an on-going process and positions will be filled as they become vacant. APD has agreed to utilize adjunct instructors to increase the diversity of current instructors.
14.	Incorporate anti-racism and cultural diversity training and workshops into the Academy curriculum.	*Approved.* APD has confirmed with Joyce James Consulting LLC that the Groundwater Analysis training workshop will receive TCOLE credit for Cultural Awareness. The contract includes training for the training staff, cadets, and all APD sworn and civilian staff. OPO is working with the Equity Office and APD to ensure that Academy staff takes the workshop prior to the start of the 144th cadet class.
15.	Reinstitute practice of following-up with a cadet who leaves the Academy for any reason.	*Approved.* APD has indicated that this practice shall become part of standard operating procedure. Dr. Kringen is reviewing the previous practice and reworking the exit interview process. Completion expected by May 1, 2021.
16.	Develop a mentorship program for all cadets, especially recruits of color.	*In progress.* A Women's Mentoring Group has been established and Dr. Kringen and staff are currently evaluating the lessons learned from this group, along with input from affinity groups, to determine how best to proceed with additional mentoring opportunities. APD plans to work with Joyce James Consulting to build a comprehensive mentoring program for all cadets.
17.	Revise the lesson plans and course content addressed in our review and recommendations of courses related to cultural competency training on pages 55 to 66 of this report, as well as the related Level I and II suggestions contained in Dr. Ferguson's curriculum review report of April 5, 2021.	*Pending Consideration.* Dr. Kringen is currently working with instructors to update Academy curriculum to include Kroll's recommendations (and the recommendations of Dr. Ferguson supported by Kroll). As of April 15, 2021, all 68 classes within the Cadet Training Unit have been evaluated under Phase 1, including incorporating an active learning activity in each lesson plan. All updates will be completed before the start of the 144th cadet class.
18.	Require an ongoing, independent review of the Academy by an outside evaluator once the 144th cadet class begins to ensure implementation of the short-term recommendations	*In progress*. APD is working with the City Manager's Office to implement this recommendation.

#	Long-Term Recommendations	APD Responses / Action Plan
1.	Consider hiring a renowned national leader in "media literacy" to help develop effective teaching videos that have positive effects on knowledge, perceived realism, behavioral beliefs, attitudes, self-efficacy, and behavior.	*Pending.* The Division Manager has been tasked with implementing a roadmap for this recommendation. She first needs to discuss internally to understand the CMO's expectations and budget.
2.	Develop an intentional strategy to further enhance the long-term diversity of Academy staff, including at the Instructor level.	*On-going.* The Academy has already instituted several measures, including reaching out to the different affinity groups to help recruit qualified and diverse officers to fill vacant positions as they occur. This will be an on-going process and positions will be filled as they become vacant. Meanwhile, APD plans to utilize adjunct instructors as needed to increase the diversity of current instructors.
3.	Revise Academy class schedules by eliminating 40-hour blocks of dry but legally important course content for such things as Penal Code, Traffic Code, and Arrest Search and Seizure, as these courses should be spread out over the length of the Academy (no more than two to four hours per day, three days a week).	APD has split up Penal Code and Traffic Code for the planned 144th cadet class. At this time, the instructors do not believe that Arrest Search and Seizure should be split up. APD will closely monitor test scores to ensure that the cadets are effectively retaining their knowledge of Penal Code and Traffic Code.
4.	Further analyze the relationships between pre-Academy, Academy, and post-Academy physical fitness standards to ensure they are consistent with successful job performance.	*Pending.* TCOLE does not have any physical fitness standards post-graduation. For the past two legislative sessions, bills have been introduced with little success to set standards for officers (post-graduation). APD has been working for the past several years to set a baseline for physical fitness and will continue to move this project forward.
5.	Consider developing a properly credentialed and supervised program to allow for all cadets, as part of a two-week orientation program prior to the Academy, to immerse themselves into community programs and organizations as "neighborhood liaison officers" for APD district representatives.	*In progress.* APD plans to incorporate a Community Connect plan beginning with the 144th Academy. The proposed plan will have cadets spend time in a pre-academy environment working in the community directly with Recruiting and District Representatives to fulfill this expectation and bring depth to the Academy experience. Further adjustments will be made if needed for future cadet classes.
6.	Require ICAT or other effective de-escalation training as part of mandatory in-service "refresher" training every two years. a. Reinforce training through use-of-force policy, ensure support of field supervisors, and include as a component of use-of-force reviews. b. Modify the videos shown in ICAT training to be consistent with Community Video Review Panel recommendations.	*Completed.* APD considers de-escalation one of the golden threads through which all Academy training is incorporated. This item has been completed; but it will continue to be a focus area of all future curricula reviews. In addition, the department plans to ensure de-escalation training is built into the mandatory in-service training. Before videos are used in de-escalation training, APD will make sure that they have been reviewed by the Community Video Review Panel.
7.	Build recovery time into the intervening period between cadet classes to promote instructor wellness and avoid burnout, low morale, and reduced job performance.	*In progress.* APD is working towards a schedule that allows sufficient time for academy trainers to refresh and not be overloaded with back-to-back classes.

8.	Develop additional content to further emphasize the importance of procedural justice in Academy training; consider developing either a separate course or adopting one already proven successful, like the course developed by the Chicago Police Department.	*Under consideration.* Through the History of Police and Race in America, the Academy covers the past actions of police that have undermined public legitimacy (which is part of the Chicago procedural justice course). APD plans to look further into covering the concepts of procedural justice as part of this course, the Fair and Impartial Policing course, or by developing a separate course for future classes.
9.	Build additional collaborations with outside mental health advocacy and treatment organizations beyond CIT training, and consider placing a greater emphasis on reducing stigma of mental health among officers either through CIT training or additional courses.	*Under consideration.* APD is in contact with members of the Baltimore Police Department (BPD), whose Collaborative Planning and Implementation Committee (CPIC) has worked to form relationships between BPD's training department and various behavioral health entities. APD plans to reach out to various stakeholders in Austin related to behavioral health for potential future collaboration.
10.	Continue research into effective peer intervention training programs like Ethical Policing is Courageous (EPIC) and Project ABLE, and consider adopting these or similar programs.	*Under consideration.* Currently, some of the basic information related to peer intervention is part of APD's General Orders on Duty to Intervene. However, APD understands from research into ABLE that the duty to intervene may not cover how officers can intervene. In the short term, APD is working with Proactive Alliance training, which includes a component of bystander training; instructors will receive the training in June 2021. Given the commitment to the 10 ABLE Standards and the need for restrict class instruction to 25 individuals or less, APD is continuing its research into the feasibility of this training for the department.
11.	Continue to research ways in which cognitive decision-making, emotional intelligence and regulation, and effective social interaction skills can be covered in Academy curriculum.	*Under consideration.* APD is investing in leadership training that uses concepts in emotional intelligence. Additionally, the department has updated its psychological testing platform to the newest version of the Minnesota Multiphasic Personality Inventory (MMPI)-3 as the standard psychological assessment tool for recruits. APD will continue to investigate and research exactly how to integrate these concepts into the basic Academy curriculum or the continuing education of officers' post-graduation.
12.	Consider ways to incorporate current Academy instructors into the Field Training Officer (FTO) program for new officers.	*On-going.* FTOs are required to attend annual refresher training at the Academy to remain current and up to date with respect to what is being taught in the Academy. The Academy has an FTO Liaison who works directly with FTO's in the field. Instructors are required to ride out in the field once a quarter to ensure that Academy training is in line with patrol operations and the FTO program.
13.	Provide additional incentives for participation as an FTO to encourage the best candidates.	*Pending consideration*
14.	Amend FTO Standard Operating Procedures to require the FTO Coordinator and Academy staff to conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six months after	*Pending consideration*

	completion to determine the extent to which the Academy prepares new officers for their duties.	
15.	Review the results of the above-noted focus group sessions with the Training Division Commander, the FTO Program Coordinator, and the affected Deputy Chief to ensure consistency between lessons from the Academy and lessons learned in the FTO program; document results and provide information to the Chief of Police.	*Pending consideration*
16.	Develop a protocol for psychological debriefings of APD combat veterans returning from military deployments to help reintegrate them back into law enforcement duties; assess recently discharged individuals' mental health suitability for police employment and assist military veteran recruits' transition from military deployment to civilian law enforcement.	*Pending consideration*

9 CONCLUSION

It is not possible to achieve perfection in policing or police training. The Austin Police Department and the APD Training Academy are human institutions, so building a long-term system of internal and external review of training methods and Academy effectiveness is essential to institutionalizing the search for excellence. Training police officers to become community-oriented, empathetic, compassionate, and resilient guardians of the public in a dynamic and diverse city, while promoting officer health and wellness, is a constantly evolving process. For this reason, police academies should be in a constant state of review and improvement. As noted in the CCJ Task Force:

> *Even if training programs are grounded in research and have been proven effective, training alone is not sufficient to prepare officers to police in a respectful, constitutional manner that comports with agency policies and prioritizes the preservation of life. Training should be accompanied by clear, detailed written policies and buttressed by engaged supervisors who model practices in accordance with training principles and agency policy – and hold officers accountable when they are out of compliance.*[233]

The recommendations outlined in this report are intended to be a springboard from which APD can continue to make a good department even better, one more attuned to the pulse of the Austin community and the demands of policing a diverse, vibrant, and progressive city in 2021. The old way of doing things no longer works. Genuine police reform is needed throughout the United States. It all starts with training.

Based on APD's efforts to date in implementing Kroll's short-term recommendations—as outlined in Section 8 of this report—and with the plans set forth by the Division Manager for achieving all short-term recommendations by May 31, 2021, we believe that a state of readiness for the 144th cadet class is achievable by this summer, or whenever reasonable as determined by the City Council and City Manager's Office. Although how effectively the Academy implements the recommendations outlined in this report will need to be independently evaluated once the Academy is up and running, there is no current reason to believe that this cannot be accomplished with the continued effort of APD leadership and Academy staff. Ultimately, the hard work of establishing a long-term foundation for a resiliency-based, guardian-centric, community-oriented police department has only begun.

[233] https://councilonci.foleon.com/policing/assessing-the-evidence/iv-effectiveness-of-police-training/

10 APPENDIX

10.1 Kroll Project Team



John R. "Rick" Brown is a former Lieutenant Colonel and Deputy Commissioner for Administration and Professional Responsibility of the Pennsylvania State Police (PSP). During his 29-year tenure, Brown oversaw the PSP's reform and accountability efforts in the areas of misconduct, sexual harassment, use of force, and early intervention/risk management initiatives. He developed the PSP's Equal Employment Opportunity Office's statewide liaison program and had oversight of citizen complaints that alleged discrimination or disparate treatment. Brown also oversaw the PSP's five-year Police-Citizen Contact Project, which utilized applied research techniques to assess the extent to which PSP officers engaged in racial or biased-based policing. Brown subsequently oversaw the implementation of proactive training and operational strategies to monitor and prevent racial profiling. In 2010, following a distinguished career in law enforcement, Brown created Transparency Matters, LLC, a certified Minority-owned Business Enterprise ("MBE") that focuses on building transparent policing policies and process change that provides organizational efficiencies, accountability, diversity, community education, training, and monitoring.



Daniel Linskey, former Superintendent-in-Chief of the Boston Police Department, is a nationally renowned expert in urban policing, training, and police-community relations. As Head of the BPD from 2009 to 2014, Chief Linskey developed and oversaw the BPD's social media, recruitment, community outreach, and engagement strategies, which have been cited as among the best practices in police management in the United States. Chief Linskey also changed the management and response of BPD to large-scale public disorder events. He oversaw the peaceful and successful management of the Boston Occupy movement and earned an international reputation at planning and overseeing major special events, and as the Incident Commander during the Boston Marathon Bombing Attack. Chief Linskey was part of a team sent to St. Louis County to assist the Department of Justice with an assessment of the St. Louis County Police Department and collaborative reform project following the events in Ferguson, Missouri in 2014. He is a frequent commentator on proper police tactics for national news organizations.



Dr. Robin Engel, a Professor of Criminal Justice at the University of Cincinnati ("UC") and Director of the UC Center for Police Research and Policy, is a nationally recognized expert on biased-based policing and one of the top-ranked female academics in the country. Dr. Engel has studied and written extensively on biased-based policing and worked with police departments throughout the United States to help them improve and reform. She has published over 60 peer-reviewed articles and book chapters and conducted research on such topics as biased-based policing, police-community relations, police use of force, police use of discretion / decision making, police legitimacy, violence reduction initiatives, reform efforts, and problem-oriented policing. Dr. Engel has conducted statistical analyses examining racial/ethnic disparities in policing outcomes for over a dozen jurisdictions.



J. Larry Mayes is serving as a Project Advisor on community engagement strategies and civilian input into police internal investigations. Mayes has worked with government officials and community leaders for more than two decades. From 2004 to 2010, Mayes served as the Cabinet Chief of Human Services for the City of Boston, where he led joint government/community-based initiatives to reduce crime and stabilize communities. Currently he serves as Vice President of Programs for Catholic Charities in Boston, where he leads the organization's statewide programs on adult education, immigration resettlement and legal services, childcare, and new poverty strategies. In 2014, Mayes was appointed to the Community Ombudsman Oversight Panel, which reviews the BPD's Internal Affairs citizen complaint cases.



Dr. Cassi L. Fields is an expert in the design, development, validation, and administration of large-scale public safety human capital projects, with special expertise in selection and promotional systems in organizations with a history of alleged employment discrimination. Dr. Fields has pioneered many of the nation's most successful human capital selection initiatives, promotion and training programs, and routinely teaches and writes about implicit bias. Since receiving her Ph.D. in 1989, Dr. Fields has dedicated her career to helping public safety agencies remove roadblocks for people of diverse backgrounds compete for promotions. She has developed hundreds of assessment centers for police, fire, and sheriff departments throughout the United States.



A.J. Bingham is serving as an advisor in multi-cultural community outreach in Austin, facilitating local community input into police-citizen interactions, and providing insight into Austin's business, civic, and non-profit communities. Bingham is Founder and CEO of The Bingham Group, LLC, a City of Austin-certified MBE, and full-service consulting firm that represents and advises clients on legislative and regulatory matters throughout Texas. An Austin native, Bingham is active in the community and serves on the boards of the Young Men's Business League of Austin, the Austin Trail of Lights Foundation, and the Long Center for the Performing Arts. A lawyer by background, Bingham received his B.A. in Political Science from Wake Forest University, and law degree from Washburn University School of Law.



Mark Ehlers is the Engagement Leader of Kroll's work with the City of Austin. Ehlers has 35 years of combined legal and investigative experience in the public and private sectors, specializing in government and university investigations, discrimination and harassment in the workplace, and alleged ethical violations. He is currently a managing director in Kroll's Philadelphia office. Prior to joining Kroll, Ehlers served for 18 years as an Assistant United States Attorney, first in the District of Columbia, where he served in the Homicide and Sex Offense Units, and later in the Eastern District of Pennsylvania, where he served on the Organized Crime Strike Force. Since joining Kroll, Ehlers has conducted numerous internal investigations and best practice reviews for a diverse array of public and private sector clients, including the University of Cincinnati Police Department (review and investigation of a UCPD officer's fatal shooting of an unarmed motorist) and North Carolina State Highway Patrol (review of hiring and selection practices, training and supervision following public reports of police misconduct), among others. Ehlers received a B.A., *magna cum laude*, from Wittenberg University, and a J.D., *with honors*, from George Washington University.

About Kroll

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COMPLAINT
EXHIBIT F

RESOLUTION NO. 20191205-066

WHEREAS, the City of Austin is committed to undoing its racist past and combatting and denouncing racism in present-day Austin; and

WHEREAS, the City of Austin acknowledges that the history of bigotry and discrimination has contributed to racially disparate outcomes in policing and policy; and

WHEREAS, the Center for Policing Equity found in 2016 that the Austin Police Department (APD) was more likely to use force in communities where more African-Americans and Latinos live, and when force was used, APD was more likely to use more severe force in communities where African-Americans and Latinos live, even after controlling for factors such as community crime and poverty rates; and

WHEREAS, the APD's state-mandated racial profiling reports consistently show that Black and Latino drivers are more than twice as likely to be searched as their white counterparts during traffic stops despite similar "hit rates", including in 2018 where 6% of traffic stops of white drivers resulted in a police searches compared to 14% for Latino drivers and 17% for Black drivers; and

WHEREAS, APD data provided per Council Resolution No. 20180614-073 (one of the Freedom City Resolutions) showed that in 2017 APD police officers made discretionary arrests of Black people at more than twice the rate of either white or Latino residents; and

WHEREAS, that same 2017 data also showed Black and Latino residents accounted for just under 75% of those discretionary arrests for driving with an invalid license, although the two groups combine to make up less than 45% of Austin's population; and

WHEREAS, that same 2017 data also showed that one out of three discretionary arrests for misdemeanor marijuana possession involved a Black resident even though less than one in ten Austinites is Black, though usage rates of marijuana are similar across racial groups; and

WHEREAS, per the quarterly report for Council Resolution No. 20180614-073, issued by APD on May 3, 2019, Black people still comprised 32% of persons arrested by APD for offenses eligible for citation, which, proportionally, amounts to more than three times Austin's Black population; and

WHEREAS, an anonymous whistle-blower has recently accused an Assistant Chief of the Austin Police Department of using racist epithets and derogatory terms, including "negro" and "nigger," to refer to specific Black elected officials and sworn officers of the Austin Police Department; and

WHEREAS, following the public release of the anonymous complaint and subsequent resignation of the Assistant Chief named in the complaint, the City Manager announced on November 7, 2019 a third-party investigation into the allegations that the

use of racial slurs and epithets lasted over a period of many years with the knowledge of other leadership at APD; and

WHEREAS, the Mayor's Task Force on Institutional Racism and Systemic Inequity recommends that the City of Austin create protocols to ensure the cultural competency of all personnel, and that the City of Austin's law enforcement agencies engage in continuous diversity and inclusion training, with special attention to implicit bias training; and

WHEREAS, in 2018, the Office of Police Oversight was created to augment accountability and transparency at APD, and that the department could benefit from expanded access and resources; and

WHEREAS, the Austin Police Department presented a training plan during the City of Austin FY2019-20 budget deliberations indicating its intention to graduate almost 200 new cadets in Academy classes scheduled to start in February 2020; and

WHEREAS, attrition rates in recent cadet classes exceeded expectations in at least the last five cadet classes, reaching as high as 49%, suggesting that there exist issues with recruitment and cadet preparedness; and

WHEREAS, while assessment center panels were recommended as a method to counter the potential bias in written exams for promotion of APD officers, there are concerns that the system does not accomplish this goal and in fact may have the opposite impact; and

WHEREAS, patterns and specific incidents of discrimination and bigotry in the Austin Police Department erode the public trust, which is necessary to effectively enforce the law, solve crimes, and maintain public safety, and so the Council finds it imperative to understand the full extent of bigotry and systemic racism and discrimination within APD, and consider reforms to APD's policies, protocols, and training curriculum; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The Council supports the investigation initiated by the City Manager into the allegations against a former APD Assistant Chief. The City Manager is directed to provide an update and publicize resulting findings to Council by January 23, 2020.

BE IT FURTHER RESOLVED:

Effective on January 23, 2020, the City Manager is directed to initiate a comprehensive, multi-pronged investigation and evaluation of the extent to which forms of bigotry and discrimination are present in the protocols, practices, and behaviors of the officers of the Austin Police Department. To the extent to which they are present, this investigation and evaluation shall document the impacts these individual and systemic biases have had on hiring, professional ranking, and treatment of personnel within APD, as well as police interactions with people of color and other marginalized groups in Austin.

The investigation should begin with an immediate focus on patterns of prejudiced behavior and institutionalized bigotry in the following high-priority areas:

1. Officer and supervisor communications, including all public posts on social media platforms that are available to the investigator, City email, and text messages and instant message communications on City devices within the last 5 years; and
2. Recruitment practices and protocols, efforts to ensure ethnic and gender diversity and inclusion in recruitment, and assessment of academic resources available to cadets.

Investigation of these high-priority areas of focus should result in an interim report that includes analysis of expressed behavior and patterns, and any immediate recommendations for reform presented publicly to the Council no later than December 7, 2020.

Investigation into and analysis of the following areas of focus should begin concurrently:

3. APD's compliance with state and federal law with regard to racial and sex discrimination in employment;
4. The basis for the weighting of assessment center panel scores in the professional ranking and promotion of APD officers, including the degree to which the use of assessment centers counters potential bias or disparate impact in the promotion process, if at all, and best practices for the transparency and use of assessment

centers in ranking, and the appropriate weights for promotion consideration at each officer level;

5. All use-of-force incident reports from June 2019 to November 2019, analyzing them by location, any resulting charges, the outcome of each incident, and demographic information including race, ethnicity, and language spoken of all persons involved;
6. Aggregate data on every recorded interaction from June 2019 to November 2019 with any member of the public, including type of interaction and its outcome (search, arrest with charges, citation with charges) and an evaluation on whether there are racial and/or ethnic or other disparities in searches, arrests, charges and citations;
7. Complaints made against officers and executives accused of bias and/or discrimination, including complaints that did not result in disciplinary action and the reason that no disciplinary action was taken in each case, for the last 10 years; and
8. Incidents leading to lawsuits for alleged police misconduct, and analysis of the outcomes and subsequent settlements of those lawsuits, including the amount of each settlement, over the last 10 years.

The evaluating entity will issue a final report no later than December 6, 2021, that details any patterns of systemic racism, racist behavior, and other forms of

discrimination found in all the above areas of focus, to include recommendations to remedy and prevent patterns of bias, remedy and prevent patterns of bias, including but not limited to:

- An actionable plan, measurable benchmarks, and appropriate timeline for eliminating racial disparities in APD stops, searches, arrests, and use-of-force incidents;
- A framework for regularly recurring reporting to the Public Safety Commission and Council on APD's progress towards achieving the fair administration of justice, an indicator in the Council-adopted five-year strategic plan;
- Reporting to the Public Safety Commission and Council on the plan to address and remedy any weaknesses and threats for APD as may be identified in the Equity Office's equity assessment tool;
- Continuing education for active APD personnel as part of the required biennial recertification process on topics including implicit bias, racial and ethnic bias, gender bias, de-escalation, the history of policing and its intersection with race in our community, cultural competency, and other topics as recommended by the Equity Office and Office of Police Oversight;
- Reputable leadership training that would benefit APD organizational culture;
- Establishing clear, published standards as it relates to the qualifications required for appointment to Assistant Chief as consistent with state law;

- Creating measurable benchmarks for enhancing diversity at all levels of the department;
- Improving background checks and screening of incoming cadets as well as active officers being considered for promotion as it relates to topics such as explicit and implicit bias, racism, homophobia, gender bias and other forms of discrimination; and
- Creating a regular reporting structure to Council detailing cadet academy class sizes, attrition rates and demographics as well as active officer attrition rates and demographics.

The report to Council should include options for a mechanism to incorporate the aforementioned recommendations and accountability metrics into the performance standards for the APD executive team.

The City Manager is directed to work with and incorporate results from any relevant work that has been conducted or is being conducted by the Equity Office, the Office of Police Oversight, and the Innovation Office as it relates to APD.

BE IT FURTHER RESOLVED:

The independent investigation and examination shall be conducted by an independent third party with substantial experience in the evaluation and investigation of police misconduct, bias, and claims in employment law and Title VII violations, as

well as in assessing systemic conditions that engender civil rights violations, including both organizational decision-making and greater policy-making rules and patterns.

The City Manager shall develop the scope of work and qualifications for the solicitation of the evaluating entity with input from the Joint Inclusion Committee, the Public Safety Commission, and community organizations that advocate for racial justice, equity, and criminal justice reform as allowable by the City's purchasing rules. The City Manager shall determine the appropriate funding sources when recommending the contract for Council approval.

The City Manager is also directed to collaborate with the Equity Office and the Office of Police Oversight in a joint oversight capacity regarding the selection and supervision of the independent investigating entity, to the extent allowed by the City's procurement policies.

BE IT FURTHER RESOLVED:

Separately from the independent third-party investigation that is to be completed no later than December 6, 2021, the City Manager shall initiate an audit of the Austin Police Department's training materials, course/section descriptions and duration, and description of any other procedures (e.g. detailed descriptions of scenarios) administered to cadet classes and to active officers related to training on communication strategies, cultural competency, acknowledging and addressing bias, use of force, de-escalation, search, proactive policing, mental health response, protocols for non-English speaking

persons, protocols for disabled persons, recognizing resistance and the rules and procedures that define resistance and their evaluation protocols, as well as the course/section content and duration of all other coursework required at the cadet academy and their evaluation protocols. The City Manager may work with and incorporate results from any review of APD hiring and training protocols that has been conducted or is being conducted by the APD's training specialist, the Equity Office, the Office of Police Oversight, and the Innovation Office.

The City Manager is directed to update or revise training materials for APD to the extent necessary to remedy any findings from the audit. This process should be as transparent as possible, ensuring that the public has access to view training materials on the topics of bias, racism, and cultural competency in policing. The audit is to be completed and reported to Council no later than June 1, 2020.

During this process, the City Manager will track and report on the following milestones:

- Training conducted at the Austin Police Academy related to reducing bias, increasing de-escalation, reducing racial disparities in use of force and severity of force, reducing racial disparities in discretionary searches, and improving communication with all individuals regardless of language, ethnicity, sexual orientation, gender identity or disability;

- Recruiting and retention and practices and procedures with a focus on whether those practices and procedures could be improved to retain ethnic and gender diversity in cadet classes, and whether those practices and procedures, including the use of disqualification codes for cadets, have a disparate effect or impact based on race, ethnicity, national origin, sex, religion, sexual orientation, or gender identity, etc.;
- Current training priorities based on hours on each topic and the overall balance of training with a focus on whether training should be re-balanced to reduce bias, increase use of de-escalation techniques, and improve culturally effective communication, and trauma-informed policing;
- Cadet training scenarios with a focus on reviewing whether the scenarios teach officers to use all strategies to de-escalate and communicate effectively in the situations statistically most likely to occur on their shifts;
- Identify police academies that have successfully revised training resulting in reduced force incidents and improved communication with diverse communities, including police Academies in Cambridge, Washington (Washington State Criminal Justice Training Commission) and Minneapolis, Minnesota and conduct site visits and review training reforms; and
- Improvements in training should be finalized with the input and participation of community groups representing those disproportionately affected by policing,

including those representing non-white residents and populations, non-English speaking residents and populations, LGTBQIA+ residents and populations, and residents and persons with disabilities.

Following the start of the cadet class scheduled to begin in February 2020, the City Manager shall ensure that no new cadet classes are to be initiated until this audit is completed, revisions to the curricula per the milestones above and new training materials, if necessary, are implemented, in order to resume cadet classes no later than September 2020. If the aforementioned revisions have not been implemented at least 30 days ahead of the start date for the anticipated June 2020 cadet class, the cadet class may be rescheduled as deemed appropriate by APD so long as the revisions have been implemented by the new start date. When classes resume, space will be made available for an independent party to audit classes and instruction.

BE IT FURTHER RESOLVED:

The City Manager shall issue biannual updates on the progress of the independent third-party investigation, to include relevant updates on the solicitation process and anticipated timelines for the investigation to proceed.

ADOPTED: December 5, 2019 **ATTEST:** _____
Jannette S. Goodall
City Clerk

COMPLAINT
EXHIBIT G

CRIME AND JUSTICE





The Science of Policing Equity

Measuring Fairness in the Austin Police Department

Phillip Atiba Goff, CENTER FOR POLICING EQUITY & JOHN JAY COLLEGE OF CRIMINAL JUSTICE
Dean Obermark, Nancy La Vigne, and Jennifer Yahner, URBAN INSTITUTE
Amanda Geller, NEW YORK UNIVERSITY

October 2016 (revised May 2017)

Public trust in law enforcement is alarmingly low in many communities nationwide, particularly in those experiencing violent crime coupled with intensive police presence. Research shows that positive police-community relationships are crucial for safer communities: citizens are more likely to engage as witnesses and as partners in crime reduction if they believe in the legitimacy of police as equitable and impartial agents of the law.[1] Yet many community members perceive law enforcement activities to be targeted toward—and biased against—nonwhite people.

Communities wracked by highly publicized shootings of unarmed people of color have called for both greater transparency and accountability on the part of the police. Likewise, law enforcement executives desire hard metrics on current practices and a way to measure changes in response to policies aimed at reducing bias and improving police-community relations.

This brief aims to address the needs of both communities through collaboration between two initiatives: The Center for Policing Equity's **National Justice Database** (NJD) and the White House's **Police Data Initiative** (PDI; see text box). Both NJD and PDI emphasize the importance of collecting and making transparent police data to measure fairness and improve policing equity. NJD also emphasizes applying a rigorous analytic framework to examination of that data.

This brief applies the NJD analytic framework to publicly available PDI data. It focuses on the Austin Police Department (APD) in Texas, one of the first agencies to make its data available through PDI. Importantly, analyses were conducted *independent of any law enforcement agency funding*. In this research brief we present empirical documentation of the degree of racial and ethnic disparities in Austin's policing practices, as well as possible interpretations of such differences.

Our purpose is to demonstrate what can be learned by thoroughly analyzing democratized data. We empirically document the degree of racial and ethnic differences in Austin's policing practices, as well as possible interpretations of such disparities. We hope the brief provides law enforcement officials

with a road map for greater transparency and accountability in police practices, so they can transform agencies to adopt more just and equitable means of promoting public safety.

Highlights

The pages that follow present analyses of APD traffic stops and searches, as well as APD officers' use of force, for the calendar years 2014 and 2015. For both yearly analyses we isolate race and ethnicity, exploring differences in practices and modeling these outcomes of interest while controlling for competing factors, such as place-specific crime rates. The raw data point to disparate treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty.

These findings demonstrate that even in an agency such as the APD, which is instituting reforms aimed at enhancing equity in policing, unwelcome disparities remain, indicating that more work is needed within and beyond law enforcement agencies. Our research also underscores the value of rigorous and impartial analysis of police data—together with public dissemination of the findings—as well as the importance of continual analyses that can help promote and measure change over time.

Collaboration between Two Nationwide Efforts to Increase Policing Equity

Since 2012, the Center for Policing Equity has been working with law enforcement leaders, academics, community advocates, and the Department of Justice to create the **National Justice Database** (NJD), a National Science Foundation–supported effort to compile national-level statistics about police behavior and develop a rigorous analytic road map for examining police data. NJD's goal is to independently help police and communities learn about disparities in law enforcement and hold departments accountable to them. To date, NJD has received commitments from police departments nationwide, serving 25 percent of the United States population; the data, however, have yet to be made public.

Against this backdrop, President Obama's Task Force on 21st Century Policing launched in May 2015 the **Police Data Initiative** (PDI), calling on law enforcement agencies across the country to make data publicly available and partner with researchers and technologists to disseminate it. The Police Foundation makes PDI data available through a portal on its website (https://publicsafetydataportal.org/). Through such transparency, PDI aims to rebuild trust between communities and police and, ultimately, to reduce crime. Thus far, over 100 law enforcement agencies have committed to release data files on police actions such as stops, searches, arrests, and uses of force. While dozens of agencies and members of the public have accessed these data, few people have analyzed the data.

Through a collaboration between these two nationwide efforts, this brief demonstrates how the NJD analytic framework can be applied to PDI data to identify the presence (or absence) of unwarranted racial disparities in officer stops, searches, uses of force, and so forth. This brief also shows how the availability of additional police data, advocated by NJD, can increase public knowledge about how to improve policing equity nationwide.

The NJD Analytic Framework

The Austin-specific findings embodied in this brief are an example of the types of questions the NJD analytic framework is designed to answer. The framework aims to distinguish among possible explanations for racial disparities in policing, of which there are three broad classes:

1. **Disparities that arise from community characteristics.** For instance, high crime rates or poverty within a community may draw increased police attention. Individuals within the community may place disproportionately more calls for service to police.
2. **Disparities that arise from police characteristics.** For instance, police may patrol some neighborhoods with less commitment to the dignity of those who live there. Or, deploying more officers to high-crime neighborhoods may produce disproportionately more interactions between police and nonwhite communities.
3. **Disparities that arise from the relationships between communities and police.** For instance, mistrust of law enforcement may incite some communities to flee approaching officers or resist arrest more than other communities do. Similarly, a sense that communities do not trust or respect police may cause officers to feel unsafe or defensive in some neighborhoods.

While the truth likely incorporates elements of each of these explanations, the NJD framework allows departments to learn about how all three contribute to racial disparities. By combining police administrative data with population data (e.g., income, education, racial demographics), police department climate surveys, and community surveys, we can credibly examine the role that each explanation plays in the disparities that both police departments and communities want to reduce.

However, because NJD data on police behavior are neither publicly accessible nor integrated into the PDI rubric, this brief carefully analyzes the role that community-level factors play in racial disparities—that is, explanation 1. The resulting analyses can be used to steer community engagement, relationship building, and continued department reform. Importantly, the persuasive power of analytics grows substantially the longer a department measures and analyzes important indicators. As a result, we encourage the APD, the people of Austin, and all PDI-participating communities to see these analyses as a *first benchmark* against which progress can be measured. With many departments set to receive similar briefs in the coming years, we hope this analytic framework can be a road map for police and communities—establishing where they are now and charting a path toward a more just future.

In fairness, no police department in the country currently collects all the data recommended in the NJD analytic framework (though several departments collect each element of non-survey data). CPE and Urban chose the APD as our partners for this brief because its use-of-force dataset is among the most comprehensive in the country and is the single most comprehensive *publicly available* use-of-force dataset. In addition to its use-of-force dataset, the APD publishes a dataset on citations and arrests resulting from vehicle stops.

The APD does not publish any officer-level data because of officer privacy considerations; police departments rarely make these data public. As a result, we are unable to analyze how much racial disparities are attributable to individual officers (compared to the department or the region). The APD also does not publish data on complaints against officers, so we are unable to examine racial disparities

in complaints using PDI data (Austin's Office of the Police Monitor publishes an annual report on citizen complaints, but these data are not in the PDI portal and thus not subject to analysis here). Additionally, though the APD does make its disciplinary matrix and general orders available to the public, these are not in the PDI portal, so we do not explore questions about policy comprehensiveness in our analyses.

The APD documents, but does not publish data on, pedestrian stops or vehicle stops not resulting in citation or arrest. As a result, we are unable to ask questions about racial disparities in pedestrian stops, and our ability to ask questions about the source of disparities in vehicle stops is limited. We encourage the APD to begin data collection of these fields while noting that new data collections are time consuming, may lower morale in the short term, and require technical infrastructure to aggregate and analyze.

The above description of APD's data holding and publicly available data is offered to demonstrate the tremendous opportunity for greater clarity on fairness in policing that could be afforded by further democratization of policing data. These opportunities are not for the APD alone but for law enforcement agencies nationwide.

The dashboard on the next page illustrates the types of data that could—and arguably should—be collected and disseminated through the PDI portal, whether Austin currently has these data publicly available, and how analyses of these data can answer critical questions that can help move the needle in reducing racial and ethnicity-based bias in policing and enhancing trust between community members and the police. The dashboard is designed to articulate the questions that can be asked of police departments using their data as well as community survey data (while the City of Austin conducts an annual police satisfaction survey of residents, it is not representative of communities most likely to experience violent crime and heavy police presence). The dashboard underscores that because certain data are not currently published through the PDI portal several questions in the NJD analytic framework cannot be posed and answered.

Austin Police Department Data

The Austin Police Department embodies 1,900 officers serving the 11th-largest city in the United States, with 930,000 residents as of 2015. The population of the Austin greater metropolitan statistical area (MSA) is more than double that of the city: 2 million residents, many of whom commute into Austin daily.



Austin, Texas

In this brief, we focus on two types of Austin police data made available through the PDI portal: vehicle stops that resulted in citation or arrest in 2015, and incidents involving police use of force in 2014. We show total counts of vehicle stops and use-of-force incidents and counts by white, black, and Hispanic race and ethnicity. Over half of Austin MSA's residents are non-Hispanic white (53 percent), nearly a third are Hispanic (32 percent), and less than one-tenth are non-Hispanic black (7 percent). Because urban centers such as Austin experience an

Availability of Austin PD Data to Answer NJD Analytic Questions

	Are there racial disparities?	How much are disparities attributable to officers?	How well do officer-level psychologies predict disparities?	What accounts for disparities?	How healthy are officers?	How comprehensive are departmental policies?
Administrative datasets						
Vehicle stops	**Moderate data**	Not in PDI	Not in PDI			
Pedestrian stops	Not in PDI	Not in PDI	Not in PDI			
Use-of-force	**Rich data**	Not in PDI	Not in PDI			
Complaints	Not in PDI	Not in PDI	Not in PDI			
Crime/calls				**Rich data**		
Officer discretion				**Moderate data**		
Neighborhood				**Rich data**		
Police climate surveys						
Psychological health					Not in PDI	
Physical health					Not in PDI	
Job health					Not in PDI	
Policy analyses						
Racial equity						Not in PDI
Trust						Not in PDI
Reduce force						Not in PDI
Thorough						Not in PDI
Effective						Not in PDI

influx of regional residents who visit the city for work and recreation, MSA population figures are more appropriate measures to adjust police data counts for exposure to different citizens. Racial and ethnic differences in police data must also be contextualized with other contributing factors, including level of illegal activity, something we model in the use-of-force analysis by using census tract level Part I crimes as a proxy.

Vehicle Stops and Searches

Over time, the volume of vehicle stops in Austin resulting in a citation remained fairly constant, at approximately 10,000 stops a month, with one sharp drop during September 2015. The number of

FIGURE 1

Vehicle Stops Resulting in a Citation, 2015

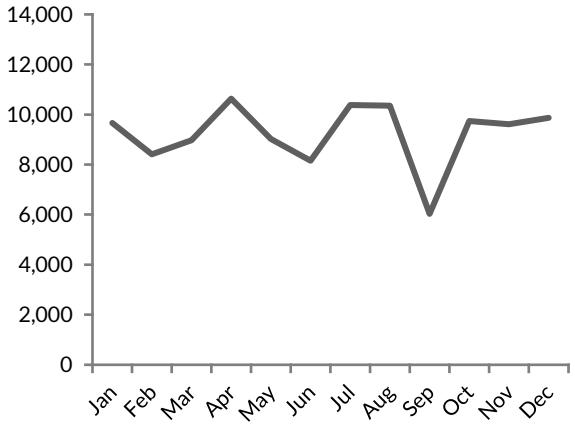
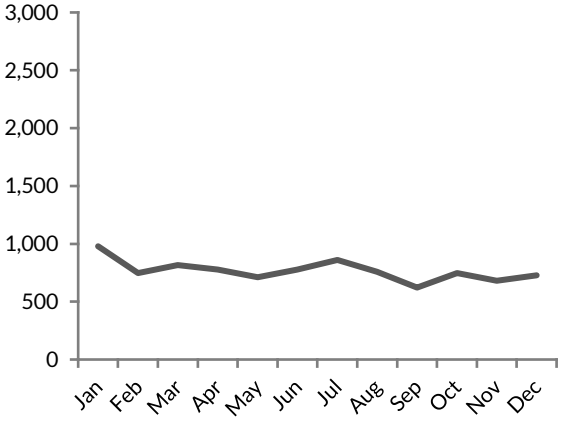


FIGURE 2

Vehicle Stops Resulting in an Arrest, 2015



vehicle stops resulting in an arrest was much lower, averaging 750 a month and remaining fairly constant across time after peaking in January 2015.

VEHICLE STOPS BY RACE OR ETHNICITY

In total, Austin police stopped more white and Hispanic than black drivers in each month of 2015, an expected pattern given the higher share of white and Hispanic residents in the Austin metropolitan area. However, among stops resulting in a citation, more white than Hispanic drivers were stopped each month, while the opposite was true for stops resulting in an arrest. Each month of 2015, a higher number of stopped Hispanic drivers were arrested than either white or black stopped drivers. These counts are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 3

Vehicle Stops Resulting in a Citation by Race or Ethnicity, 2015

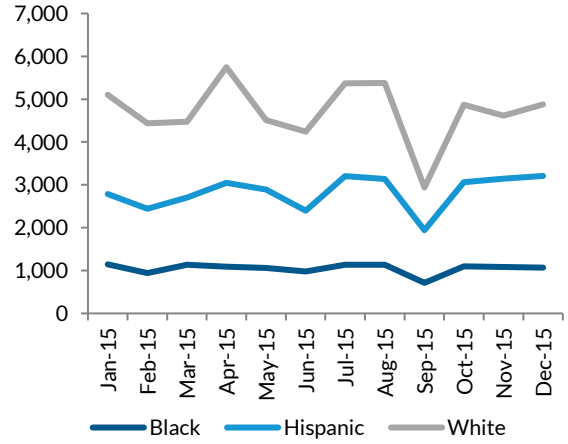
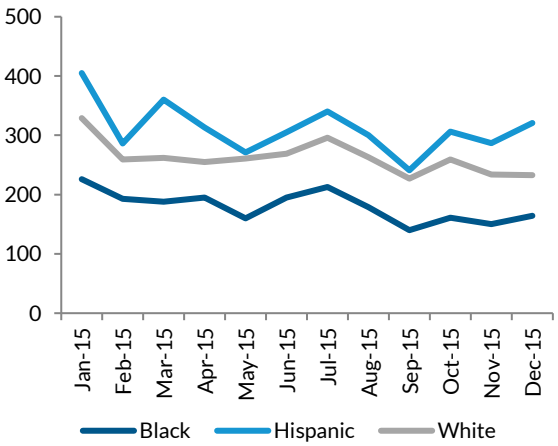


FIGURE 4

Vehicle Stops Resulting in an Arrest by Race or Ethnicity, 2015



When accounting for underlying population, however, we see that rates of vehicle stops resulting in citation or arrest were highest for black drivers throughout the year. In other words, while the fewest number of vehicle stops occurred for black drivers, a higher proportion of black people was stopped than Hispanic or white people. Similar proportions of white and Hispanic drivers experienced vehicle stops resulting in citations, but stop rates resulting in arrests were twice as high among Hispanic drivers as white drivers. Again, these rates are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 5

Per Capita Stops Resulting in a Citation by Race or Ethnicity, 2015

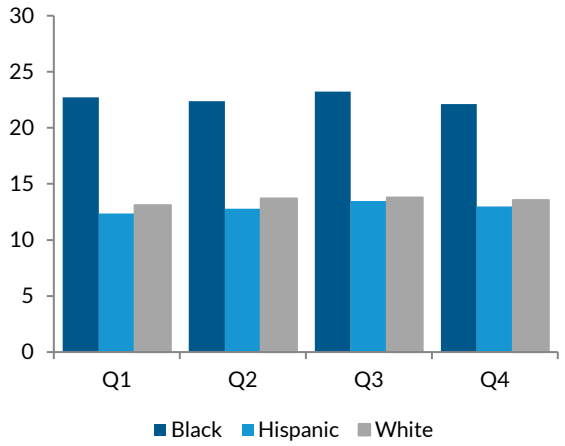
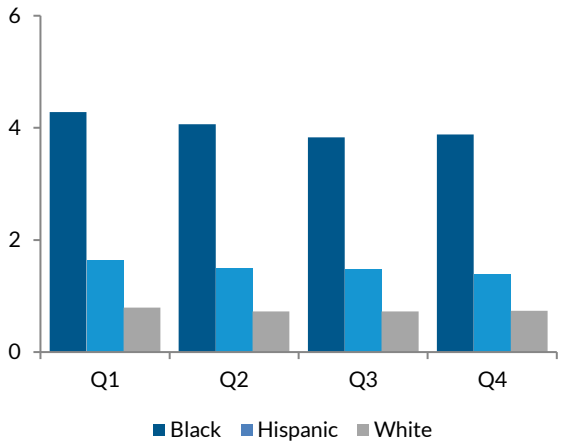


FIGURE 6

Per Capita Stops Resulting in an Arrest by Race or Ethnicity, 2015



VEHICLE SEARCHES BY RACE OR ETHNICITY

Vehicle stops may result in a search following arrest and may precede arrest if reasonably necessary for officer protection (e.g., weapons search), there is probable cause of evidence of crime, or upon the driver's consent. Because only 2 percent of APD's vehicle stops that resulted in a citation involved searches, this section focuses on vehicle stops resulting in arrest.

Three-quarters (76 percent) of APD's arrest stops involved a vehicle search; of those searches, 77 percent were described as occurring for reasons "incidental to arrest." Following *Arizona v. Gant*, 556 U.S. 332 (2009), searches performed incidental to arrest are conducted after an arrest has been made to address continuing safety threats or preserve criminal evidence. Searches performed for other reasons not incidental to arrest, including for "probable cause," as a "frisk for safety," or by driver's "consent," are assumed to have been conducted before arrest and were subjected to greater officer discretion. We focus analysis on these latter searches, which made up 23 percent of those conducted in 2015.

Focusing on searches *not* incidental to arrest, **figure 7** shows the percentage of vehicle stops resulting in a search, broken down by drivers' race/ethnicity. In general, search rates were highest for stopped black drivers and lowest for stopped Hispanic and white drivers. The search rate for black drivers peaked early in 2015 at 32 percent, meaning 1 in 3 stops of black drivers involved a search, and was lowest at the end of 2015, when one in six stops (16 percent) of black drivers resulted in a search.

Search rates for Hispanic and white drivers were generally similar, averaging 16 percent and 14 percent respectively, across the time period. By the end of 2015, the racial gap in percentage of drivers searched by race/ethnicity had closed somewhat.

The APD also records whether contraband (drugs, weapons, cash, alcohol, and "other items") was recovered from vehicle searches. One in three (32 percent) vehicle searches yielded contraband, compared with almost half (48 percent) of nonincidental vehicle searches. **Figure 8** shows the search "hit" rates, or percentage of nonincidental searches resulting in contraband discovery, by race/ethnicity. Although hit rates vary, few discernible patterns of differences by race/ethnicity are evident; hit rates average 47 percent for Hispanic drivers, 49 percent for black drivers, and 50 percent for white drivers.

This lack of hit rate differences can typically be interpreted as evidence of lack of bias in decisions to stop or search,[2] but in this case, because the data include only cases in which arrests were made, we do not know the rates at which different groups were searched and contraband was *not* found. Consequently, we cannot draw any conclusions about bias from hit rates among arrest stops. Regardless, APD's hit rates are very high and may be explained, at least in part, by the fact that APD has one of the strictest consent search requirements in the country, for which officers must have probable cause to conduct a search. These hit rates also appear high because they are limited to stops resulting in arrest; other jurisdictions looking at *all vehicle stops* have found hit rates ranging from 7 percent to 34 percent.[3]

FIGURE 7

Share of Drivers Subject to Nonincidental Searches by Race or Ethnicity, 2015

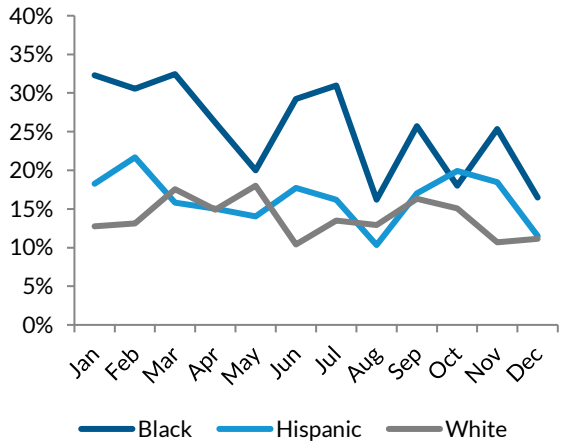
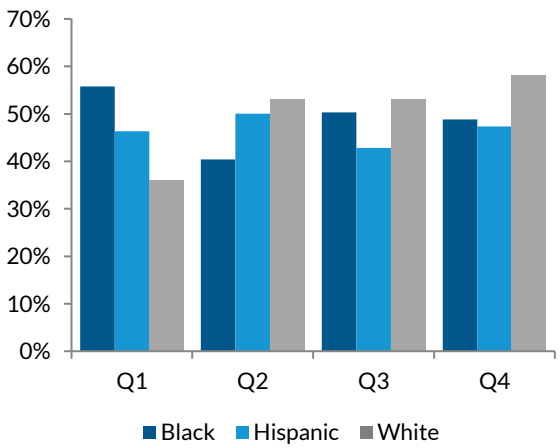


FIGURE 8

Nonincidental Search "Hit" Rates by Race or Ethnicity, 2015



MODELING OFFICER DISCRETION IN VEHICLE STOPS AND SEARCHES

In this section, we present analyses that help us explore whether racial disparities in vehicle stops that lead to citations and arrests are potentially warranted or unwarranted. First, we examine the role of officer discretion in deciding whether to make a stop; second, we model the decision to search a vehicle once a stop is made.

Officer Discretion. To understand whether racial disparities in officer-initiated (discretionary) stops exceed racial disparities in nondiscretionary stops, such as those initiated by citizens through calls for service and commission of felony or misdemeanor, we compute the officer discretionary index (ODI) as follows:

$$ODI = \frac{Officer\ Initiated\ Stops\ of\ B/H/W}{All\ Officer\ Initiated\ Stops} - \frac{Citizen\ Initiated\ Stops\ of\ B/H/W}{All\ Citizen\ Initiated\ Stops}$$

The ODI compares the proportion of officer discretionary stops of blacks (*B*), Hispanics (*H*), and whites (*W*) with the proportion of citizen-initiated stops of the same racial/ethnic group. If a racial group's proportion among officer discretionary stops differs from that among nondiscretionary stops, there may be indication of racial bias. **A positive (or negative) ODI indicates that officers are initiating a higher (or lower) share of stops of that racial or ethnic group than are citizens.** A null result (0) indicates that officer discretion judgment is on pace with that of citizens.

For the Austin police data, we examined the reason recorded for making a stop to distinguish between officer-initiated (discretionary) and citizen-initiated (nondiscretionary) stops. Discretionary stops were defined as those of a "suspicious person," while nondiscretionary stops were defined as those stemming from calls for service or violations of Texas penal code, Austin city ordinance, or the Texas water safety act.[4]

Table 1 shows the ODIs calculated for blacks, Hispanics, and whites in Austin, based on vehicle stops resulting in citation or arrest for 2015. As shown, there is no evidence of racial bias in stops of Hispanic drivers. By contrast, among stops resulting in citation or arrest, a higher share of officer-initiated stops of black drivers was present than citizen-initiated stops of black drivers (the difference is higher among stops resulting in arrest). An equivalently *lower* share of officer-initiated stops of white drivers was present than citizen-initiated stops of white drivers.

TABLE 1

Officer Discretionary Indices, 2015

	Stops Resulting in Citations			Stops Resulting in Arrests		
	% discretionary	% non-discretionary	ODI	% discretionary	% non-discretionary	ODI
Blacks	21	13	0.09	31	19	0.12
Hispanics	41	41	0.01	38	38	0.00
Whites	38	47	-0.09	31	43	-0.12

Note: Discretionary stops are initiated by police officers; nondiscretionary stops are initiated by citizens.

Decision to Search. To understand officers' decision to search a vehicle following a stop, we examined four possibly predictive factors available in the Austin police data, simultaneously in a logistic regression model: driver's race or ethnicity (black, Hispanic, white), driver's gender (male, female), driver's age, and whether the officer indicated he or she knew the driver's race or ethnicity before making the stop.[5] We also tested the possibility that these factors interacted to predict a decision to search.

For this model, we again focused on vehicle stops resulting in arrest and on searches that were not described as incidental to that arrest. Overall, 23 percent of the arrest stops resulted in a search for which the recorded reason was either "probable cause" (18 percent), "frisk for safety" (4 percent), "contraband in plain view" (0.5 percent), or driver's "consent" (0.3 percent).

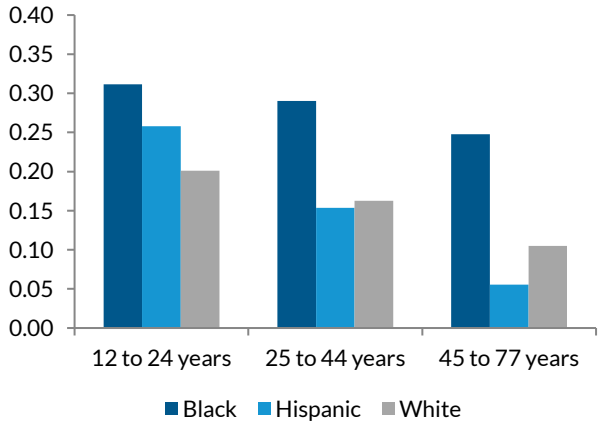
In the regression model, drivers' race/ethnicity and age interacted to predict Austin police officers' decisions to conduct searches on stopped vehicles. This finding remained true after adjusting for driver's gender, whether driver's race was known before the stop, and an interaction between driver's gender and age. **Figure 9** graphs the model-estimated probabilities that a vehicle would be searched by drivers' race/ethnicity and age. Three findings are noteworthy:

- Stopped black drivers of all ages had the highest probabilities of vehicle search.
- Stopped, young Hispanic drivers had the second-highest probability (0.26) of vehicle search, at a rate comparable to that of older black drivers (0.25).
- Age-related reductions in the probabilities of vehicle search were greater for stopped white and Hispanic drivers than for black drivers.

We also noted (but did not graph) that the estimated probabilities of vehicle search were higher when the driver's race was known before a stop (0.30 compared with 0.19) and for younger male (0.28) than older female drivers (0.15). These findings were included as controls in the model.

FIGURE 9

Probability of Vehicle Search by Age and Race or Ethnicity, 2015



Source: Logistic regression model predicting vehicle search, among 7,870 APD vehicle stops ending in arrest in 2015.
Note: Model included drivers' race, age, gender, whether race was known before the stop, and interactions between race and age and between age and gender.

This model provides insight into the relative importance of different factors in predicting Austin officers' decision to conduct a vehicle search on stops ending in arrest, but is unable to control for drivers' differential involvement in illegal activity or exposure to police.

Use-of-Force Incidents

Next, we examined APD's 2014 data on recorded use of officer force against citizens, made public for the PDI and the most comprehensive, publicly available use-of-force dataset. Use-of-force incidents included a range of physical responses to citizens' failure to comply with officers' verbal commands.

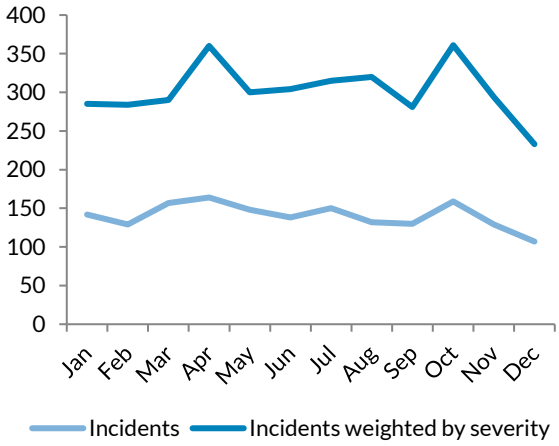
Six general categories of force were distinguishable in the APD data: (1) weaponless use of hands or feet to target pressure points; (2) use of an impact weapon such as a baton; (3) use of a chemical agent such as pepper spray; (4) canine bites; (5) use of a conducted energy device (Taser) or less-lethal impact weapon, such as beanbag/rubber bullets; and (6) lethal firearm use. By far, the largest category of force used was (1), which accounted for over two-thirds of force incidents.

Following the NJD analytic framework, we applied a weighted severity scale to these force incident categories so use of a firearm, for example, was weighted more severely than use of a baton. Accordingly, the severity weighting consisted of a 6-point scale aligned with the six categories of force above (e.g., 1 = hands/body, 2 = impact weapon, 3 = pepper spray, 4 = canine, 5 = Taser/less-lethal weapon, 6 = lethal firearm). Higher scores corresponded with more severe levels of force.

Throughout this section, we analyzed both the *counts* of force incidents as well as the *severity* of force incidents. As shown in **figure 10**, both the counts and severity of APD force incidents remained fairly constant over time from January to December 2014.[6] This finding is similar to that for the counts of APD vehicle stops in 2015.

FIGURE 10

Use-of-Force Incidents, 2014



USE OF FORCE BY RACE OR ETHNICITY

Figure 11 and **figure 12** display the counts and severity of force incident rates by citizen's race or ethnicity (per 1,000 citizens). Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA. However, this descriptive analysis of differential exposure to use of force provides no insight on the

complex factors and characteristics that might give rise to such disparities. To explore those factors, more advanced statistical modeling was necessary, as advocated by the NJD analytic framework.

FIGURE 11

Use-of-Force Rates by Citizen Race or Ethnicity, 2014

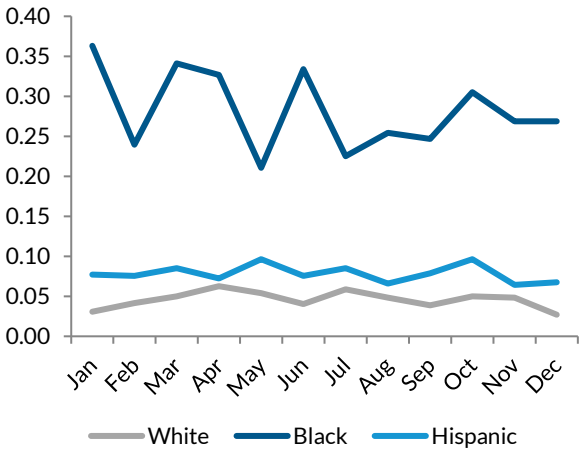
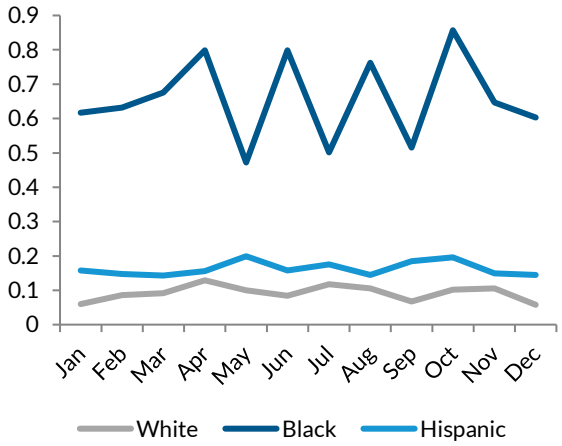


FIGURE 12

Use-of-Force Severity Rates by Citizen Race or Ethnicity, 2014



MODELING USE OF FORCE

To better understand apparent disparities in APD's citywide use of force, we tested the effect of neighborhood-level characteristics on the number of use-of-force incidents that occurred within a census tract, as well as the cumulative severity of force used in those same events.[7]

For these two analyses, we aggregated use-of-force events/severity to the tract level, estimating the independent effects of six neighborhood and demographic characteristics on police use of force: Part I crime rate, median household income, percentage of college-educated residents, homeownership rate, percentage of black residents, and percentage of Hispanic residents.[8] The first four of these characteristics represent theoretically relevant predictors of police use of force, and so they function as control variables in our models. The percentages of black and Hispanic residents help test whether disparities in police use of force persisted after controlling for those community characteristics.

Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin's neighborhoods with a higher percentage of black or Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood were statistically significant positive predictors of police use of force. The percentage of black residents in a neighborhood had a larger effect than percentage of Hispanic residents in both models.

Median household income and crime rate were also impactful and statistically significant predictors of police use of force. The results of the use-of-force incidents model and the use-of-force severity model were largely the same. The statistically significant predictors—median household income, Part I crime rate, percentage of black residents, and percentage of Hispanic residents—were identical

between models. As one would expect, estimated effect sizes were larger for the force severity model because of the multiplicative severity-weighting procedure.

According to the model of use-of-force incidents, a one-point rise in the percentage of black residents increased the expected number of use-of-force incidents by 2.6 percent, holding all other variables constant. The percentage of Hispanic residents had a smaller effect: a one-point rise in the percentage of Hispanic residents increased the expected number of use-of-force incidents by 1.1 percent.

Comparing effect sizes across all independent variables was challenging because the variables were measured in vastly different units. Using standard deviation units, we compared the estimated percentage change in use-of-force incidents uniformly. Increasing the percentage of black residents in a tract by a standard deviation—about 8 percent—led to a 24 percent increase in expected use-of-force incidents. By contrast, a standard deviation increase in the percentage of Hispanic residents—almost 22 percent—led to a 27 percent increase in expected use-of-force incidents.

A standard deviation increase in a tract's Part I crime rate—an upswing of 50 crimes per 1,000 residents—increased the expected number of use-of-force incidents by 92 percent. A standard deviation increase in median household income—a rise of $28,000—decreased the expected number of use-of-force incidents by 33 percent.

FIGURE 13

Estimated Percentage Change in Use-of-Force Incidents Resulting from a Percentage-Point Increase by Race and Ethnicity

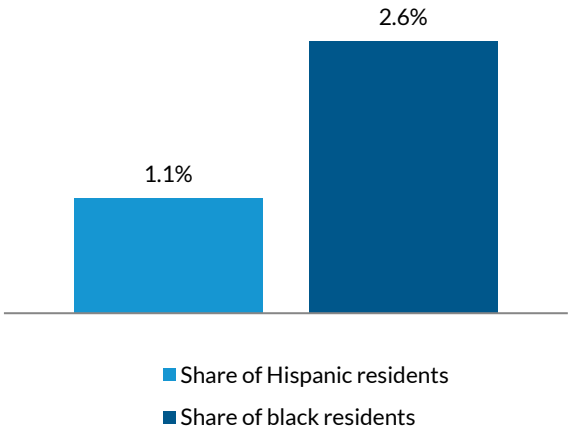
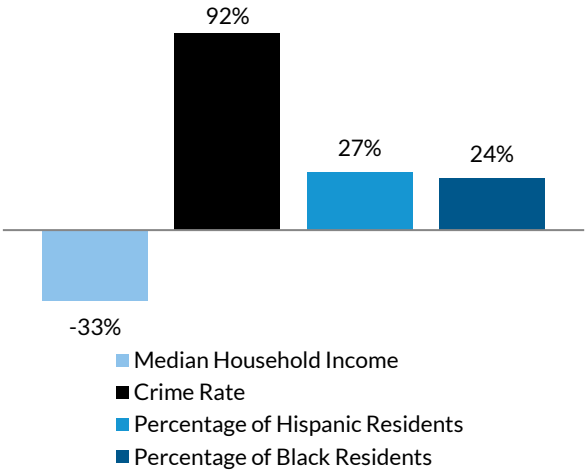


FIGURE 14

Estimated Percentage Change in Use-of-Force Incidents Resulting from a Standard Deviation Increase by Income, Crime, Race, and Ethnicity



Lessons Learned

This report is the first to apply NJD's independent analytic framework to police data made available through the White House's PDI. Although several limitations applied to the findings, as noted throughout, the analyses are encouraging because they represent the start of a more comprehensive and transparent effort to understand—and help correct—the degree of racial and ethnic disparities in policing practices. The information presented is beneficial to both community members and policing executives alike.

As described earlier, the NJD analytic framework identifies three categories of explanation for racial disparities in policing: community level, police level, and relationship level. Given the limited availability of publicly available APD data, and that which is housed on the PDI portal, our analyses are only able to examine community-level explanations. Specifically, this brief analyzes racial disparities in APD police vehicle stops and use of force. The results are mixed.

Analyses of vehicle stop data reveal three important findings.

First, APD searches appear to be highly effective. Searches left to officer discretion (that is, not incidental to arrest) returned contraband roughly 48 percent of the time. While this result may stem in part from APD's unusually stringent policy on consent searches, which require probable cause, it also may be the result of missing data. Given that APD does not publish data on all vehicle stops, an unknown number of vehicle stops and searches did not result in arrest. *To address this omission, APD Chief Acevedo has instructed the department to collect and publish data on both pedestrian and vehicle stops that do not result in citation or arrest by January 2017.*[9] Presumably fewer of those searches end in arrest given the lack of contraband found. Still, the relatively high hit rate should be a goal of law enforcement, and APD's available data suggest reasons for optimism.

Second, there are racial disparities in the decision to stop and search a suspect. Both our models of decisionmaking around searches, the officer discretionary index and the probability of vehicle search model, reveal disparities by race. The ODI revealed that, for vehicle stops ending in citation or arrest, stopped black motorists made up a higher share of officer-discretionary stops than of stops mandated by citizen complaints or by statutes requiring officers to stop a citizen. Similarly, the ODI revealed that stopped white motorists made up a lower share of officer-discretionary stops. Finally, a model of the decision to search revealed that blacks and Hispanics, once stopped, were more likely to be searched than would be indicated by their representation among those stopped. These findings, however, are qualified by our final finding.

Third, an analysis of racial disparities in hit rates revealed no reliable differences between blacks, whites, and Hispanics. Previous research demonstrates that this is not proof of the absence of bias.[10]

The takeaway from these findings is that community-level explanations appear to account for a sizable amount in observed racial disparities. We encourage the APD to continue monitoring these issues and to collect data on all its vehicle stops to assess the equity of officer behavior even more accurately.

By contrast, analyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained.** In other words, community-level explanations of use of force were not sufficient to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks.

Still, these discrepancies are not direct evidence of racial prejudice. Rather, they suggest that police-level and/or relationship-level explanations of use-of-force incidents are also implicated. In other words, we advise APD to focus on police-level and relationship-level concerns to reduce racially disparate use of force.

Common police-directed interventions to minimize racially disparate policing include trainings, particularly ones on how to identify and disarm unintended forms of bias (e.g., identity traps and/or implicit bias), policy reviews conducted by external auditors, and collaborative policy reviews with communities. Relationship-directed interventions highlight principles of procedural justice, particularly issues of community voice and police transparency.

Importantly, the APD has recently attempted to promote transparency by instituting a policy governing the use of body-worn cameras. That someone may be terminated immediately if his or her camera is not activated during a deadly force incident (without appropriate justification) is a strong accountability metric. Similarly, new additions to APD's disciplinary matrix on failure to report complaints (with termination recommended after a second infraction) are strong signals of accountability. APD has also stated that effective January 2017 it will include a form on the back of citations that affords citizens an avenue for both complaints and positive feedback following interactions with officers. Finally, APD's leadership on issues of data transparency also signals a willingness to receive criticism and reform in line with the shared values of police and communities—of particular importance given recent concerns about nonreporting in Texas.[11]

We recommend that APD continue each of these initiatives as well as engage the broader communities of Austin in collaborative efforts to reform and implement policies that reflect their shared values. We also encourage police and community collaboration to design metrics of accountability that are easily understood by the community and leveraged for change both inside the APD and in the Austin metropolitan area.

The science of policing equity demonstrates clearly that collaboration between communities and police is necessary to rebuild trust and reduce the negative consequences that can result from racial disparities in police contacts.[12] We encourage further pursuit of those collaborations and the use of these analyses as benchmarks for both racial equity and progress toward that goal.

Notes

1. See Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006).
2. See Nicola Persico and Petra Todd, "Generalising the Hit Rates Test for Racial Bias in Law Enforcement, with an Application to Vehicle Searches in Wichita," *Economic Journal* 116, no. 515 (2006): F351–67.
3. Persico and Todd, "Generalising the Hit Rates Test."
4. Austin has a three-square-mile lake within the city limits.
5. Although officers' recording of whether a driver's race was known before a vehicle stop was missing for 13 percent of cases, including the variable did not alter the substantive effects of other factors in the model, and it was a significant predictor of vehicle search, so it was retained. Regarding the trustworthiness of the variable's values, we note that officers' were half as likely to indicate race was known (7 percent versus 15 percent) during nighttime (9:00 p.m.–2:00 a.m.) vehicle stops as during other hours of the day, and APD policies specified strict guidelines and consequences for failure to record accurate information for this variable.
6. Use-of-force incidents are coded at the citizen level, meaning that an event consisting of two officers using force against one citizen, for example, is counted as a single use-of-force incident. Conversely, an event that consists of one officer using force on two citizens would be counted as two use-of-force incidents.
7. Use-of-force incidents were weighted using the same schema as used previously.
8. Those characteristics are taken from the 2010–14 American Community Survey five-year estimates.
9. Chase Hoffberger, "APD to Collect More Data," *Austin Chronicle*, April 8, 2016, http://www.austinchronicle.com/news/2016-04-08/apd-to-collect-more-data/.
10. Kate Antonovics and Brian G. Knight, "A New Look at Racial Profiling: Evidence from the Boston Police Department," *Review of Economics and Statistics* 91, no. 1 (2009): 163–77.
11. Lise Olsen, "In Texas and California, Policy Fail to Report Use-of-Force Fatalities from 2005–2015," *Houston Chronicle*, October 9, 2016, http://www.houstonchronicle.com/news/houston-texas/houston/article/In-Texas-and-California-police-fail-to-report-9958631.php.
12. Tyler, *Why People Obey the Law*.

Errata

This brief was updated in May 2017 to clarify the titles of figures 13 and 14 on page 13, make language on pages 5 and 14 more consistent, and correct a typographical error on page 15.

About the Authors

Phillip Atiba Goff is the cofounder and president of the Center for Policing Equity and the Franklin A. Thomas Professor in Policing Equity at the John Jay College of Criminal Justice. Dr. Goff is an expert in contemporary forms of racial bias and discrimination, as well as the intersections of race and gender.

Dean Obermark is a research associate in the Urban Institute's Justice Policy Center and, previously, an operations analyst in the St. Louis Metropolitan Police Department. He has expertise in conducting research analyses of police data and operations, including using GIS for data visualization and spatial analysis.

Nancy La Vigne is director of the Justice Policy Center at the Urban Institute. She manages a staff of over 50 scholars and conducts her own research on policing, criminal justice technologies, and reentry from incarceration.

Jennifer Yahner is a senior research associate in the Urban Institute's Justice Policy Center with over 15 years of experience conducting criminal justice research on the needs and experiences of vulnerable populations, including justice-involved individuals and victims of crime.

Amanda Geller is a clinical associate professor of sociology and director of applied quantitative research at New York University. Dr. Geller's research examines the interactions between criminal justice policy and socioeconomic disadvantage and their joint effects on urban neighborhoods, families, and individuals.

Acknowledgments

This brief was funded by National Science Foundation, the Atlantic Philanthropies, the W.K. Kellogg Foundation, and the Schott Foundation. We are grateful to them and to all our funders, who make it possible for the Urban Institute and the Center for Policing Equity to advance our missions. The views expressed are those of the authors and should not be attributed to the Center for Policing Equity, the Urban Institute, its trustees, or its funders. Funders do not determine research findings or the insights and recommendations of CPE or Urban experts. Further information on the Urban Institute's funding principles is available at www.urban.org/support.

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ABOUT THE CENTER FOR POLICING EQUITY

Created in 2008 by a collaborative effort of Dr. Phillip Atiba Goff and then-Denver Police Department Commander Dr. Tracie L. Keesee, the Center for Policing Equity is a research and action think tank that works collaboratively with law enforcement, communities, and political stakeholders to identify ways to strengthen relationships with the communities they serve. Using evidence-based approaches to social justice, we use data to create levers for social, cultural, and policy change.

The Center for Policing Equity is also the home of the National Justice Database, a National Science Foundation effort to standardize national-level data on police behavior. Principal investigators on the National Justice Database are Phillip Atiba Goff, Jack Glaser, Amanda Geller, and Steven Raphael.

URBAN INSTITUTE

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EXHIBIT H

GO
364

Austin Police Department
General Orders

Off-Duty Law Enforcement Actions

364.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This order is intended to provide guidelines for officers of the Austin Police Department with respect taking law enforcement action while off-duty. The same standard of objective reasonableness that applies to on-duty enforcement actions shall also apply to off-duty enforcement actions.

This order does not apply to officers who are working in an undercover or approved secondary employment capacity.

364.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged, particularly when officers are outside their jurisdiction. Reporting to the appropriate law enforcement agency and safe monitoring of suspected criminal activity is favored.

(a) Officers should not attempt to initiate enforcement action when witnessing minor crimes; Officers are not expected to place themselves in unreasonable peril.

(b) Officers who becomes aware of an incident or circumstance that he reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage, should take reasonable action to minimize the threat.

(c) Officers must remember that their authority to arrest may be limited based upon their jurisdiction.

364.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal and state law and department general orders.

(a) Any officer wishing to carry a firearm while off-duty is authorized to do so as either a law enforcement officer as allowed by this order or as a civilian under the authority of the state issued license, not both.

(b) Officers shall carry their Department issued badge and identification card when carrying firearms off-duty under the authority granted to a law enforcement officer.

(c) An officer carrying off-duty under the authority of a state issued license, whether concealed or open, will not display his or her APD badge or ID, or use or carry any APD equipment, including their issued firearm.

(d) Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage, or taken any drugs, that would tend to adversely affect the officer's senses or judgment.

(e) For purposes of this section of this order, off-duty is defined and as any activity in which the employee is not receiving compensation or benefit as a result of their employment with the Department, or wearing any part of an authorized uniform.

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1. This definition does not apply to officers who are working in an undercover capacity.

364.4 DECISION TO INTERVENE

Generally, off-duty officers should consider waiting for on-duty uniformed officers to arrive and gather as much accurate intelligence as possible instead of immediately intervening.

(a) Officers should take into consideration the following factors when making a decision on whether or not to intervene:

1. The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.
2. The inability to communicate with responding units.
3. The lack of equipment, such as handcuffs, OC or baton.
4. The lack of cover.
5. The potential for increased risk to bystanders if the off-duty officer were to intervene.
6. Unfamiliarity with the surroundings.
7. The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

364.4.1 INTERVENTION PROCEDURE

If involvement is reasonably necessary, an officer should call or have someone else call 9-1-1 to request immediate assistance if possible.

(a) The operator should be informed that an off-duty officer is on-scene and provided a description of the officer if possible.

(b) Officers should clearly identify himself as a police officer to those involved in the situation, if practicable.

(c) Officers should fully cooperate with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

364.4.2 INCIDENTS OF PERSONAL INTEREST

Unless there is an exigent circumstance, employees shall refrain from handling police incidents of personal interest (e.g., family or neighbor disputes). When practicable, employees should report the matter to 9-1-1 so that an on-duty officer can respond.

(a) Offenses that may be committed against the employee, members of the employee's family, or a business interest of the employee will be reported to the Investigative Unit with responsibility for investigation of such offenses. Normal filing procedures will be followed to prevent any potential for abuse of authority.

(b) Employees shall not maintain continued involvement in any criminal case, nor personally file any criminal charge in a court of law, against any person for criminal

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offenses committed against the employee, any member of the employee's family, or which involves any business in which the employee has a proprietary interest.

364.4.3 CIVILIAN RESPONSIBILITIES
Civilian personnel should not become involved in any law enforcement incident while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable. This order does not prevent a civilian employee from taking action as a private citizen as authorized by State law.

364.4.4 OTHER CONSIDERATIONS
When encountering non-uniformed officers in public, uniformed officers should wait for acknowledgement by non-uniformed officers in case they need to maintain an undercover capability.

364.5 REPORTING

(a) In addition to contacting the appropriate agency, any off-duty employee who engages in any law enforcement activity shall notify, as soon as practicable:

1. The employee's immediate supervisor if the supervisor is on-duty.
2. Any on-duty supervisor when the employee's immediate supervisor is off-duty.

(b) The notified supervisor shall determine whether a report should be filed by the employee.

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IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF TEXAS AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and ELIZABETH HERRERA (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. THE CITY OF AUSTIN, *Defendants*.	§	Case No. 1:22-cv-00655-RP (lead cause) JURY TRIAL REQUESTED
JESSICA ARELLANO, Individually and as Next Friend of Z.A., a minor child, *Plaintiff*, v. THE CITY OF AUSTIN, GABRIEL GUTIERREZ, and LUIS SERRATO *Defendants*.	§	Case No. 1:23-cv-00008-RP JURY TRIAL REQUESTED
ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and ELIZABETH HERRERA (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. LUIS SERRATO, and GABRIEL GUTIERREZ, *Defendants*.	§	Case No. 1:23-cv-00009-RP JURY TRIAL REQUESTED

CONSOLIDATED PLAINTIFF ARELLANO'S NOTICE OF APPEARANCE OF JEFF EDWARDS ON BEHALF OF CONSOLIDATED PLAINTIFF JESSICA ARELLANO

Consolidated Plaintiff Jessica Arellano respectfully files this notice of appearance for Jeff

Edwards as lead counsel for consolidated Plaintiff Jessica Arellano, individually and as next friend of Z.A., a minor child, as well as the appearance of attorneys working in association with Mr. Edwards: David James, Lisa Snead, and Paul Samuel.

Plaintiff Arellano requests that all notices, including all electronic notices, given or required to be given, and all papers filed or served, or required to be served, in the above-captioned matter also to be provided to and served upon Mr. Edwards, Mr. James, Ms. Snead, and Mr. Samuel at the addresses set forth below.

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Respectfully submitted,

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By /s/ Jeff Edwards
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's electronic case filing system on August 24, 2023.

/s/ *Jeff Edwards*
Jeff Edwards

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, Sr. and **ELIZABETH HERRERA,** Individually and as "Next Friend" to minor child Z.A.G.,	§	
Plaintiffs,	§	
v.	§	
	§	**Case Nos. 22-CV-655, 23-CV-9-RP**
THE CITY OF AUSTIN, LUIS SERRATO, AND GABRIEL GUTIERREZ,	§	
Defendants.	§	
Hendler Flores Law, PLLC, Intervenor.	§	

Ffffffffffff.,,,,,,,

HENDLER FLORES LAW, PLLC'S
RESPONSE TO PLAINTIFFS' MOTION TO DISMISS FIRST AMENDED PLEA
IN INTERVENTION PURSUANT TO FRCP 12(B)(1) AND FRCP 12(B)(6)

Hendler Flores Law, PLLC (HFL or Intervenor), hereby files its Response to *Plaintiff's Motion to Dismiss Hendler Flores Law, PLLC's First Amended Plea in Intervention Pursuant to FRCP 12(b)(1) and FRCP 12(b)(6)*. Dkt. 58.

The Court previously considered and rejected Plaintiffs' arguments against HFL's intervention in a ten-page order entered August 2, 2023. Dkt. 52 (hereinafter "Order"). Counsel for Plaintiffs Gonzales and Herrera recognize this in their motion—"The Court previously considered and rejected some of the foregoing positions in connection with the Court's order granting HFL's motion …." Dkt. 58 at 2. The Court ruled on Plaintiffs' arguments already, and there is no cause or reason to "preserv[e] these arguments for appeal." *Id.*

First, the Court closely evaluated the issue of jurisdiction over Intervenor's claim and found it has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).[1] Order at 5. The Court also rejected

[1] While unnecessary to repeat HFL's arguments supporting intervention here, HFL fully incorporates its *Motion for Leave*

Plaintiffs' ripeness arguments. Order at 5-6. Plaintiffs have not presented authority to the Court in their Motion that changes the Court's previous and correct analysis. To the extent that Plaintiffs are requesting the Court should reconsider its rulings, that request should be denied.

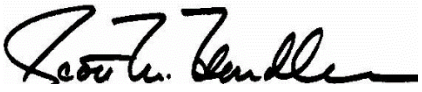
Plaintiffs' attempt to recycle its previous arguments as a Rule 12(b)(1) motion to dismiss should similarly be denied. Plaintiff first equates the petition as "the equivalent of a complaint for purposes of Rule 12(b)(6)," citing a bankruptcy case in which the Fifth Circuit held that "Intervenors' failure to provide pre-purchase notice renders their liens extinguished" under the Louisiana Oil Well Lien Act ("LOWLA"). *Matter of ATP Oil & Gas Corp.*, 888 F.3d 122, 129 (5th Cir. 2018). There is little, if any, relevance that case has to the case at hand. But Plaintiffs hinge that false equivalency to make their Rule 12(b)(6) argument. After unilaterally equating the petition with a cause of action for breach of contract, Plaintiffs proceed with their straw-man Rule 12(b)(6) argument to dismiss a non-existent breach of contract complaint. Motion at 12-14. Admittedly, a breach of contract claim by HFL for Plaintiffs' failure to pay HFL's expenses and contingent fee would not be ripe today because Plaintiffs have not won a recovery and refused to pay HFL. However, here, HFL has properly asserted a contractual charging lien against Plaintiffs' recovery in this matter. The Court recognized this and has correctly granted HFL's intervention. Order at 8-9.

WHEREFORE, Intervenor HFL asks that the Court deny Plaintiffs' Motion to Dismiss First Amended Plea in Intervention.

Dated: September 5, 2023

Respectfully submitted,

HENDLER FLORES LAW, PLLC



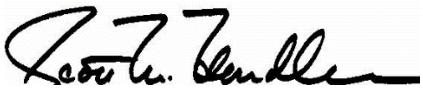
Scott M. Hendler - Texas Bar No. 9445500
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to Intervene as of Right and Brief in Support (Dkt. 38) and *Reply to Plaintiffs' Response to Motion for Leave to Intervene and Brief in Support* (Dkt. 51) herein.

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Austin, Texas 78746
Telephone: (512) 439-3200
Facsimile: (512) 439-3201

CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system on September 5, 2023.



Scott M. Hendler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR. AND	§	
ELIZABETH HERRERA	§	
Plaintiffs,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 1:22-cv-655-RP**
CITY OF AUSTIN,	§	
Defendant.	§	
	§	

DEFENDANT CITY OF AUSTIN'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint (Doc. No. 60). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' Second Amended Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment. [1]

1. Defendant denies the allegations contained in Paragraph 1.

2. Defendant denies the allegations contained in Paragraph 2.

3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies same.

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Second Amended Complaint.

4. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies same.

5. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies same.

6-10. Defendant admits the allegations contained in Paragraphs 6-10.

11. Defendant denies the allegations contained in Paragraph 11.

12. Defendant denies the allegations contained in Paragraph 12.

13. Defendant denies the allegations contained in Paragraph 13.

14. Defendant denies the allegations contained in Paragraph 14.

15. Defendant denies the allegations contained in Paragraph 15.

16. Upon information and belief, Defendant admits the allegations contained in Paragraph 16.

17. Defendant admits that the quoted language in Paragraph 17 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 17 and therefore denies same.

18. Defendant denies the allegations contained in Paragraph 18.

19. Upon information and belief, Defendant admits the allegations contained in Paragraph 19.

20. Defendant admits that the quoted language in Paragraph 20 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 20 and therefore denies same.

21. Defendant denies the allegations contained in Paragraph 21.

22. Upon information and belief, Defendant admits the allegations contained in Paragraph 22.

23. Upon information and belief, Defendant admits the allegations contained in Paragraph 23.

24. Defendant admits that the quoted language in Paragraph 24 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 24 and therefore denies same.

25. Defendant denies the allegations contained in Paragraph 25.

26. Upon information and belief, Defendant admits the allegations contained in Paragraph 26.

27. Defendant admits that the quoted language in Paragraph 27 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 27 and therefore denies same.

28. Defendant denies the allegations contained in Paragraph 28.

29. Upon information and belief, Defendant admits the allegations contained in Paragraph 29.

30. Defendant admits that the quoted language in Paragraph 30 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 30 and therefore denies same.

31. Defendant denies the allegations contained in Paragraph 31.

32. Defendant denies the allegations contained in Paragraph 32.

33. Defendant admits that the quoted language in Paragraph 33 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 33 and therefore denies same.

34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant admits that the quoted language in Paragraph 35 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 35 and therefore denies same.

36. Defendant admits that the quoted language in Paragraph 36 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 36 and therefore denies same.

37. Defendant admits that the quoted language in Paragraph 37 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 37 and therefore denies same.

38. Defendant denies the allegations contained in Paragraph 38.

39. Defendant admits that the quoted language in Paragraph 39 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 39 and therefore denies same.

40. Defendant denies the allegations contained in Paragraph 40.

41. Defendant admits that the quoted language in Paragraph 41 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 41 and therefore denies same.

42. Defendant denies the allegations contained in Paragraph 42.

43. Defendant admits that the quoted language in Paragraph 43 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 43 and therefore denies same.

44. Defendant denies the allegations contained in Paragraph 44.

45. Upon information and belief, Defendant admits the allegations contained in Paragraph 45.

46. Defendant admits that the quoted language in Paragraph 46 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 46 and therefore denies same.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant admits that the quoted language in Paragraph 48 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 48 and therefore denies same.

49. Defendant denies the allegations contained in Paragraph 49.

50. Defendant admits that the quoted language in Paragraph 50 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 50 and therefore denies same.

51-60. Defendant denies the allegations contained in Paragraphs 51-60.

61-127. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraphs 61-127 and therefore denies same.

128. Defendant admits the allegations contained in Paragraph 128.

129-130. Defendant denies the allegations contained in Paragraphs 129-130.

131. Defendant admits the allegations contained in the first two sentences of Paragraph 131. Defendant denies the remaining allegations contained in Paragraph 131.

132. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 132 and therefore denies same.

133. Defendant admits that the quoted language in Paragraph 133 accurately describes portions of the statement. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 133 and therefore denies same.

134. Defendant admits the allegations contained in Paragraph 134.

135. Defendant denies the allegations contained in Paragraphs 135.

136. Defendant admits that it employed Officer Gutierrez. Defendant denies the remaining allegations contained in Paragraph 136.

137-160. Defendant denies the allegations contained in Paragraphs 137-160.

161. Paragraph 161 merely contains Plaintiffs' request for a jury trial and thus no response is required of this Defendant.

162. Defendant denies the allegations contained in Paragraph 162.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird
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ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, via CM/ECF in compliance with the Federal Rules of Civil Procedure, this 6th day of September 2023.

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and ELIZABETH HERRERA (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. THE CITY OF AUSTIN, *Defendant*.	§ § § § § § § § § § § §	Case No. 1:22-cv-00655-RP (Lead Case) JURY TRIAL REQUESTED

JESSICA ARELLANO, Individually and as Next Friend of Z.A., a minor child, *Plaintiff*, v. THE CITY OF AUSTIN, GABRIEL GUTIERREZ, and LUIS SERRATO *Defendants*.	§ § § § § § § § § §	Case No. 1:23-cv-00008-RP JURY TRIAL REQUESTED

ALEX GONZALES, SR., Individually and as "Next Friend" to minor child Z.A.G. and ELIZABETH HERRERA (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs*, v. LUIS SERRATO, and GABRIEL GUTIERREZ, *Defendants*.	§ § § § § § § § § § § §	Case No. 1:23-cv-00009-RP JURY TRIAL REQUESTED

PLAINTIFFS' REPLY ON [DKT. 58] MOTION TO DISMISS HENDLER FLORES LAW, PLLC'S FIRST AMENDED PLEA IN INTERVENTION PURSUANT TO FRCP 12(B)(1) AND FRCP 12(B)(6)

Plaintiff Alex Gonzales, Sr. and Plaintiff Elizabeth Herrera (collectively "Plaintiffs") file this reply brief on [Dkt. 58], Plaintiffs' consolidated Motion to Dismiss Hendler Flores Law PLLC's ("HFL") First Amended Plea in Intervention. Intervenor HFL filed a response brief to Plaintiffs' motion. *See* HFL Response, [Dkt. 67].

HFL's response brief simply does not address the substantive arguments made in Plaintiffs' motion to dismiss. Indeed, HFL's response makes a candid and unequivocal admission that HFL's intervention claim for breach of contract is not ripe because no breach of contract has occurred.

1. This Court granted HFL's motion for leave to intervene in this case on the express understanding that HFL's intervention claim is a claim for breach of contract. The Court's order permitting HFL to intervene states: "*Because HFL seeks to recover under breach of contract* while Plaintiffs bring claims for violation of 42 U.S.C. §1983, HFL must establish federal jurisdiction." *See* [Dkt. 52 at p. 4] (emphasis added). The Court's order further states: "*As HFL's intervention is based upon their breach of contract claim*, they must satisfy the four requirements of Rule 24(a)(2)." *See id.* at p. 7 (emphasis added).

2. HFL's attempt to recharacterize its intervention claim as something other than a breach of contract claim is unavailing. HFL writes: "HFL has properly asserted a contractual charging lien against Plaintiffs' recovery in this matter." *See* HFL Response, [Dkt. 67 at p.2]. But, as noted above, this Court granted HFL's motion for leave to intervene with the express understanding that HFL's intervention claim is a claim for *breach of contract*.

3. HFL's response brief candidly admits that any such claim for breach of contract is not ripe. HFL's response brief states: "Admittedly, a breach of contract claim by HFL for Plaintiffs' failure to pay HFL's expenses and contingent fee ***would not be ripe today*** because Plaintiffs have not won a recovery and refused to pay HFL." *See* HFL Response, [Dkt. 67 at p. 2] (emphasis added).

4. HFL's response brief does not address the arguments in Plaintiffs' motion that HFL's claim is not ripe because it *has not accrued* under Texas law. *See* Motion, [Dkt. 58 at pp. 4-7]. The arguments and authorities in Plaintiffs' motion, coupled with HFL's admission that any breach of contract claim is not ripe, compels the Court to dismiss HFL's intervention claim for lack of ripeness pursuant to FRCP 12(b)(1).

5. HFL's response brief does not address the arguments in Plaintiffs' motion that supplemental jurisdiction is not created merely by satisfaction of the requirements for joinder under FRCP 24(a). *See* Motion, [Dkt. 58 at pp. 8-11]. Plaintiffs' motion cited multiple cases specifically holding that a terminated contingent fee attorney who attempts to intervene in the former client's lawsuit is not entitled to supplemental jurisdiction. *See id.* at pp. 10-11. HFL's response brief does not address these arguments or on-point authorities at all. HFL's intervention claim—a state law claim between non-diverse parties—must be dismissed for lack of federal jurisdiction pursuant to FRCP 12(b)(1).

6. HFL's response brief suggests or assumes that an intervention claim is simply not subject to a FRCP 12(b)(6) motion to dismiss for failure to state a claim. *See* HFL Response, [Dkt. 67 at 2]. This is wrong, as demonstrated by the authorities cited in Plaintiffs' motion to dismiss. *See* Motion, [Dkt. 58 at p. 11 fn.13]. There is simply no doubt that an intervention claim is subject to dismissal under FRCP 12(b)(6). *See, e.g., Colony Ins. Co. v. Peachtree Constr., Ltd.*,

647 F.3d 248, 255-58 (5th Cir. 2011) (applying 12(b)(6) standards to intervention claim); *Vanderbilt Mortg. & Fin., Inc.*, 735 F.Supp.2d 679, 687-707 (S.D.Tex. 2010) (same); *ED&F Man Biofuels, Ltd. v. MV Fase*, 728 F.Supp.2d 862, 865-83 (S.D.Tex. 2010) (same).[1] HFL's admission that any breach of contract claim is not ripe also is an admission that HFL's intervention claim does not allege the required legal elements of a claim for breach of contract—because no breach of contract has occurred. *See* HFL Response, [Dkt. 67 at 2]. HFL's intervention claim therefore should be dismissed pursuant to FRPC 12(b)(6) because HFL has failed to state a claim upon which relief can be granted.

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[1] *See also LULAC v. Abbott*, 2022 U.S. Dist. LEXIS 176337 at *38-75, 2022 WL 4545757 (W.D. Tex. Sept. 28, 2022) (same) *BellSouth Telecomm. LLC v. Calls Plus Inc.*, 2018 U.S. Dist. LEXIS 45133 at *22-27, 2018 WL 1371243 (W.D. La. Feb. 5, 2018) (same); *U.S. v. Dimeglio*, 2014 U.S. Dist. LEXIS 60609 at *37-43, 2014 WL 1761674 (W.D. Tex. May 1, 2014) (same); *David v. Signal Int'l*, LLC, 2013 U.S. Dist. LEXIS 138476 at *9-19, 2013 WL 5428639 (E.D. La. Sept. 26, 2013) (same); *Desert Eagle Distrib. Of El Paso, Inc. v. KPMG LLP*, 2008 U.S. Dist. LEXIS 26215 at *13-23, 2008 WL 576228 (W.D. Tex. Jan. 22, 2008) (same).

Dated: September 12, 2023

Respectfully Submitted,

/s/ Donald Puckett
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Attorneys for Plaintiffs
Alex Gonzales, Sr. and Elizabeth Herrera

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Donald Puckett
Donald Puckett

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

ALEX GONZALES SR., and ELIZABETH HERRERA, *Plaintiffs,*	§	
v.	§	**CIVIL ACTION NO. 1:22-cv-00655-RP**
CITY OF AUSTIN *Defendant.*	§	

JESSICA ARELLANO, individually, and as next friend for Z.A., a minor child and wrongful death beneficiary of Alex Gonzales Jr., *Plaintiffs,*	§	
v.	§	**CIVIL ACTION NO. 1:23-CV-00008-RP**
THE CITY OF AUSTIN; GABRIEL GUTIERREZ; and LUIS SERRATO, *Defendants.*	§	

ALEX GONZALES, SR., individually as a "Next Friend" to minor child Z.A.G and ELIZABETH HERRERA (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs,*	§	**CIVIL ACTION NO. 1:23-CV-00009-RP**
v.	§	
LUIS SERRATO, and GABRIEL GUTIERREZ, *Defendants.*	§	

DEFENDANT CITY OF AUSTIN'S UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED ANSWERS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant City of Austin files this Unopposed Motion for Leave to File Amended Answers in Civil Actions No. 1:22-cv-00655-RP and No. 1:23-cv-8-RP pursuant to Federal Rule of Civil Procedure 15(a)(2) as follows:

1. In Civil Action No. 1:22-cv-00655-RP, the City filed its answer to Plaintiffs' Second Amended Complaint on September 6, 2023. (Doc. 68). In Civil Action No. 1:23-cv-8-RP, the City filed its answer to Plaintiff's Complaint on January 30, 2023. (Doc. 6)

2. Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that after 21 days of serving a pleading a party may amend its pleading only with the opposing party's written consent or the court's leave.

3. Defendant City of Austin requests leave to amend its answers in the above actions in order to clarify the employment status of Defendant Serrato on the date of the incident and clarify that the City contends that Serrato was acting under the color of law during the incident. Good cause exists to allow the City to amend the answers since discovery has just begun in the case and no party would be prejudiced by the proposed amendments at this stage of the case. The City's proposed Amended Answer to the Plaintiffs' Second Amended Complaint in Civil Action No. 1:22-cv-00655-RP is attached hereto as Exhibit 1, and the City's proposed Amended Answer to Plaintiff's Complaint in Civil Action No. 1:23-cv-8-RP is attached hereto as Exhibit 2.

4. Plaintiffs and Codefendants in both cases are unopposed to this motion.

WHEREFORE PREMISES CONSIDERED, Defendant City of Austin respectfully requests that the Court grant it leave to file the attached Amended Answers in Civil Actions No. 1:22-cv-00655-RP and No. 1:23-cv-8-RP.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
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Austin, Texas 78767-1546
Telephone (512) 974-1342
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel for Plaintiffs and Defendants regarding the substance of this motion and they are unopposed to the relief requested in this motion.

/s/ H. Gray Laird III

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 19th day of October, 2023.

/s/ H. Gray Laird III

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR. AND ELIZABETH HERRERA *Plaintiffs,*	§	
v.	§	**CIVIL ACTION NO. 1:22-cv-655-RP**
CITY OF AUSTIN, *Defendant.*	§	

DEFENDANT CITY OF AUSTIN'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Amended Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint (Doc. No. 60). Pursuant to Rules 8, 12 and 15 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

AMENDED ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' Second Amended Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiffs, Defendant expressly denies that averment. [1]

1. Defendant denies the allegations contained in Paragraph 1.

2. Defendant denies the allegations contained in Paragraph 2.

3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies same.

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Second Amended Complaint.

4. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies same.

5. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies same.

6-10. Defendant admits the allegations contained in Paragraphs 6-10.

11. Defendant denies the allegations contained in Paragraph 11.

12. Defendant denies the allegations contained in Paragraph 12.

13. Defendant denies the allegations contained in Paragraph 13.

14. Defendant denies the allegations contained in Paragraph 14.

15. Defendant denies the allegations contained in Paragraph 15.

16. Upon information and belief, Defendant admits the allegations contained in Paragraph 16.

17. Defendant admits that the quoted language in Paragraph 17 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 17 and therefore denies same.

18. Defendant denies the allegations contained in Paragraph 18.

19. Upon information and belief, Defendant admits the allegations contained in Paragraph 19.

20. Defendant admits that the quoted language in Paragraph 20 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 20 and therefore denies same.

21. Defendant denies the allegations contained in Paragraph 21.

22. Upon information and belief, Defendant admits the allegations contained in Paragraph 22.

23. Upon information and belief, Defendant admits the allegations contained in Paragraph 23.

24. Defendant admits that the quoted language in Paragraph 24 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 24 and therefore denies same.

25. Defendant denies the allegations contained in Paragraph 25.

26. Upon information and belief, Defendant admits the allegations contained in Paragraph 26.

27. Defendant admits that the quoted language in Paragraph 27 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 27 and therefore denies same.

28. Defendant denies the allegations contained in Paragraph 28.

29. Upon information and belief, Defendant admits the allegations contained in Paragraph 29.

30. Defendant admits that the quoted language in Paragraph 30 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 30 and therefore denies same.

31. Defendant denies the allegations contained in Paragraph 31.

32. Defendant denies the allegations contained in Paragraph 32.

33. Defendant admits that the quoted language in Paragraph 33 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 33 and therefore denies same.

34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant admits that the quoted language in Paragraph 35 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 35 and therefore denies same.

36. Defendant admits that the quoted language in Paragraph 36 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 36 and therefore denies same.

37. Defendant admits that the quoted language in Paragraph 37 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 37 and therefore denies same.

38. Defendant denies the allegations contained in Paragraph 38.

39. Defendant admits that the quoted language in Paragraph 39 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 39 and therefore denies same.

40. Defendant denies the allegations contained in Paragraph 40.

41. Defendant admits that the quoted language in Paragraph 41 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 41 and therefore denies same.

42. Defendant denies the allegations contained in Paragraph 42.

43. Defendant admits that the quoted language in Paragraph 43 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 43 and therefore denies same.

44. Defendant denies the allegations contained in Paragraph 44.

45. Upon information and belief, Defendant admits the allegations contained in Paragraph 45.

46. Defendant admits that the quoted language in Paragraph 46 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 46 and therefore denies same.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant admits that the quoted language in Paragraph 48 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 48 and therefore denies same.

49. Defendant denies the allegations contained in Paragraph 49.

50. Defendant admits that the quoted language in Paragraph 50 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 50 and therefore denies same.

51-60. Defendant denies the allegations contained in Paragraphs 51-60.

61-127. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraphs 61-127 and therefore denies same.

128. Defendant admits the allegations contained in Paragraph 128.

129-130. Defendant denies the allegations contained in Paragraphs 129-130.

131. Defendant admits the allegations contained in the first two sentences of Paragraph 131. Defendant denies the remaining allegations contained in Paragraph 131.

132. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 132 and therefore denies same.

133. Defendant admits that the quoted language in Paragraph 133 accurately describes portions of the statement. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 133 and therefore denies same.

134. Defendant admits the allegations contained in Paragraph 134.

135. Defendant denies the allegations contained in Paragraphs 135.

136. Defendant admits that it employed Officer Gutierrez. Defendant denies the remaining allegations contained in Paragraph 136.

137-147 Defendant denies the allegations contained in Paragraphs 137-147.

148. Defendant admits the allegations contained in Paragraph 148.

149-160. Defendant denies the allegations contained in Paragraphs 149-160.

161. Paragraph 161 merely contains Plaintiffs' request for a jury trial and thus no response is required of this Defendant.

162. Defendant denies the allegations contained in Paragraph 162.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird
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ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 19th day of October, 2023.

Via CM/ECF:

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ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JESSICA ARELLANO, individually, and as next friend for Z.A., a minor child and wrongful death beneficiary of Alex Gonzales Jr., *Plaintiff,*	§	**CIVIL ACTION NO. 1:23-CV-00008-RP**
v.	§	
THE CITY OF AUSTIN; GABRIEL GUTIERREZ; and LUIS SERRATO, *Defendant.*	§	

DEFENDANT CITY OF AUSTIN'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

TO THE HONORABLE JUDGE PRESIDING:

Defendant City of Austin ("City") hereby files its Amended Answer and Affirmative Defenses to Plaintiff's Complaint (Doc. No. 1). Pursuant to Rules 8, 12 and 15 of the Federal Rules of Civil Procedure, Defendant respectfully shows the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' Original Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment. [1]

1. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the Original Complaint and therefore denies same.

2. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

contained in Paragraph 2 of the Original Complaint and therefore denies same.

3. Defendant admits that on the date of this incident, Defendant Gabriel Gutierrez was employed as a police officer with the Austin Police Department. Defendant denies the remaining allegations contained in Paragraph 3 of the Original Complaint.

4. Defendant admits the allegations contained in Paragraph 4 of the Original Complaint.

5. Defendant admits the allegations contained in Paragraph 5 of the Original Complaint.

6. Defendant admits the allegations contained in Paragraph 6 of the Original Complaint.

7. Defendant admits the allegations contained in Paragraph 7 of the Original Complaint.

8. Defendant admits the allegations contained in Paragraph 8 of the Original Complaint.

9. Defendant admits the allegations contained in Paragraph 9 of the Original Complaint.

10. Upon information and belief, Defendant admits the allegations contained in Paragraph 10 of the Original Complaint.

11. Upon information and belief, Defendant admits the allegations contained in Paragraph 11 of the Original Complaint.

12. Upon information and belief, Defendant denies the allegations contained in Paragraph 12 of the Original Complaint.

13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of the Original Complaint and therefore denies same.

14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the Original Complaint and therefore denies same.

15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the Original Complaint and therefore denies same.

16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

contained in Paragraph 16 of the Original Complaint and therefore denies same.

17. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 of the Original Complaint and therefore denies same.

18. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 18 of the Original Complaint and therefore denies same.

19. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of the Original Complaint and therefore denies same.

20. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of the Original Complaint and therefore denies same.

21. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 21 of the Original Complaint and therefore denies same.

22. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 of the Original Complaint and therefore denies same.

23. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 of the Original Complaint and therefore denies same.

24. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 24 of the Original Complaint and therefore denies same.

25. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 25 of the Original Complaint and therefore denies same.

26. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 26 of the Original Complaint and therefore denies same.

27. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 27 of the Original Complaint and therefore denies same.

28. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 28 of the Original Complaint and therefore denies same.

29. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 29 of the Original Complaint and therefore denies same.

30. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 30 of the Original Complaint and therefore denies same.

31. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 31 of the Original Complaint and therefore denies same.

32. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 32 of the Original Complaint and therefore denies same.

33. Defendant admits the allegations contained in Paragraph 33 of the Original Complaint.

34. Upon information and belief, Defendant admits the allegations contained in Paragraph 34 of the Original Complaint.

35. Upon information and belief, Defendant admits the allegations contained in Paragraph 35 of the Original Complaint.

36. Upon information and belief, Defendant admits the allegations contained in Paragraph 36 of the Original Complaint.

37. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 37 of the Original Complaint and therefore denies same.

38. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 38 of the Original Complaint and therefore denies same.

39. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 39 of the Original Complaint and therefore denies same.

40. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 40 of the Original Complaint and therefore denies same.

41. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 41 of the Original Complaint and therefore denies same.

42. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 42 of the Original Complaint and therefore denies same.

43. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 43 of the Original Complaint and therefore denies same.

44. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 44 of the Original Complaint and therefore denies same.

45. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 45 of the Original Complaint and therefore denies same.

46. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 46 of the Original Complaint and therefore denies same.

47. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 47 of the Original Complaint and therefore denies same.

48. Defendant admits the allegations contained in the first sentence of Paragraph 48. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 48 of the Original Complaint and therefore denies same.

49. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 49 of the Original Complaint and therefore denies same.

50. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 50 of the Original Complaint and therefore denies same.

51. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 51 of the Original Complaint and therefore denies same.

52. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 52 of the Original Complaint and therefore denies same.

53. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 53 of the Original Complaint and therefore denies same.

54. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 54 of the Original Complaint and therefore denies same.

55. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 55 of the Original Complaint and therefore denies same.

56. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 56 of the Original Complaint and therefore denies same.

57. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 57 of the Original Complaint and therefore denies same.

58. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 58 of the Original Complaint and therefore denies same.

59. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 59 of the Original Complaint and therefore denies same.

60. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 60 of the Original Complaint and therefore denies same.

61. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 61 of the Original Complaint and therefore denies same.

62. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

contained in Paragraph 62 of the Original Complaint and therefore denies same.

63. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 63 of the Original Complaint and therefore denies same.

64. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 64 of the Original Complaint and therefore denies same.

65. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 65 of the Original Complaint and therefore denies same.

66. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 66 of the Original Complaint and therefore denies same.

67. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 67 of the Original Complaint and therefore denies same.

68. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 68 of the Original Complaint and therefore denies same. Defendant admits the allegations contained in the second sentence of Paragraph 68.

69. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 69 of the Original Complaint and therefore denies same.

70. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 70 of the Original Complaint and therefore denies same.

71. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 71 of the Original Complaint and therefore denies same.

72. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 72 of the Original Complaint and therefore denies same.

73. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 73 of the Original Complaint and therefore denies same.

74. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 74 of the Original Complaint and therefore denies same.

75. Defendant denies the allegations contained in Paragraph 75 of the Original Complaint.

76. Defendant denies the allegations contained in Paragraph 76 of the Original Complaint including all subparts thereof.

77. Defendant denies the allegations contained in Paragraph 77 of the Original Complaint.

78. Defendant denies the allegations contained in Paragraph 78 of the Original Complaint.

79. Upon information and belief, Defendant admits the allegations contained in Paragraph 79 of the Original Complaint.

80. Upon information and belief, Defendant admits the allegations contained in Paragraph 80 of the Original Complaint.

81. Upon information and belief, Defendant admits the allegations contained in Paragraph 81 of the Original Complaint.

82. Defendant denies the allegations contained in Paragraph 82 of the Original Complaint.

83. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 83 of the Original Complaint and therefore denies same.

84. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 84 of the Original Complaint and therefore denies same.

85. Defendant denies the allegations contained in Paragraph 85 of the Original Complaint.

86. Defendant denies the allegations contained in Paragraph 86 of the Original Complaint.

87. Defendant denies the allegations contained in Paragraph 87 of the Original Complaint.

88. Defendant denies the allegations contained in Paragraph 88 of the Original Complaint.

89. Upon information and belief, Defendant admits the allegations contained in Paragraph 89 of the Original Complaint.

90. Defendant admits that the language in Paragraph 90 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 90 and therefore denies same.

91. Defendant admits that the language in Paragraph 91 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 91 and therefore denies same.

92. Upon information and belief, Defendant admits the allegations contained in Paragraph 92.

93. Defendant admits that the language in Paragraph 93 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 93 and therefore denies same.

94. Defendant admits that the language in Paragraph 94 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 94 and therefore denies same.

95. Defendant admits that the language in Paragraph 95 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 95 and therefore denies same.

96. Defendant admits that the language in Paragraph 96 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 96 and therefore denies same.

97. Upon information and belief, Defendant admits the allegations contained in Paragraph 97.

98. Upon information and belief, Defendant admits the allegations contained in Paragraph 98.

99. Upon information and belief, Defendant admits the allegations contained in Paragraph 99.

100. Defendant admits that the language in Paragraph 100 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 100 and therefore denies same.

101. Defendant admits that the language in Paragraph 101 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 101 and therefore denies same.

102. Defendant admits that the language in Paragraph 102 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 102 and therefore denies same.

103. Upon information and belief, Defendant admits the allegations contained in Paragraph 103.

104. Defendant admits that the language in Paragraph 104 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 104 and therefore denies same.

105. Upon information and belief, Defendant admits the allegations contained in Paragraph 105.

106. Defendant admits that the language in Paragraph 106 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 106 and therefore denies same.

107. Defendant admits that the language in Paragraph 107 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 107 and therefore denies same.

108. Defendant denies the allegations contained in Paragraph 108 of the Original Complaint.

109. Defendant denies the allegations contained in Paragraph 109 of the Original Complaint.

110. Defendant admits that the language in Paragraph 110 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 110 and therefore denies same.

111. Defendant admits that the language in Paragraph 111 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 111 and therefore denies same.

112. Defendant admits that the language in Paragraph 112 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 112 and therefore denies same.

113. Defendant admits that the language in Paragraph 113 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 113 and therefore denies same.

114. Defendant admits that the language in Paragraph 114 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 114 and therefore denies same.

115. Defendant admits that the language in Paragraph 115 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 115 and therefore denies same.

116. Defendant admits that the language in Paragraph 116 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 116 and therefore denies same.

117. Defendant denies the allegations contained in Paragraph 117 of the Original Complaint.

118. Defendant denies the allegations contained in Paragraph 118 of the Original Complaint.

119. Defendant admits the allegations contained in Paragraph 119 of the Original Complaint.

120. Defendant admits that the language in Paragraph 120 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 120 and therefore denies same.

121. Defendant admits that the language in Paragraph 121 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 121 and therefore denies same.

122. Defendant admits that the language in Paragraph 122 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 122 and therefore denies same.

123. Defendant admits that the language in Paragraph 123 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 123 and therefore denies same.

124. Defendant admits that the language in Paragraph 124 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 124 and therefore denies same.

125. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 125 of the Original Complaint and therefore denies same.

126. Defendant denies the allegations contained in Paragraph 126 of the Original Complaint.

127. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 127 of the Original Complaint and therefore denies same.

128. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

contained in Paragraph 128 of the Original Complaint and therefore denies same.

129. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 129 of the Original Complaint and therefore denies same.

130. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 130 of the Original Complaint and therefore denies same.

131. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 131 of the Original Complaint and therefore denies same.

132. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 132 of the Original Complaint and therefore denies same.

133. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 133 of the Original Complaint and therefore denies same.

134. Defendant admits the allegations contained in Paragraph 134 of the Original Complaint.

135. Defendant adopts and incorporates its responses to the previous paragraphs of the Original Complaint.

136. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 136 of the Original Complaint and therefore denies same.

137. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 137 of the Original Complaint and therefore denies same.

138. Defendant admits the allegations contained in Paragraph 138 of the Original Complaint.

139. Defendant denies the allegations contained in Paragraph 139 of the Original Complaint.

140. Defendant denies the allegations contained in Paragraph 140 of the Original Complaint.

141. Defendant denies the allegations contained in Paragraph 141 of the Original Complaint.

142. Defendant denies the allegations contained in Paragraph 142 of the Original Complaint.

143. Defendant denies the allegations contained in Paragraph 143 of the Original Complaint.

144. Defendant denies the allegations contained in Paragraph 144 of the Original Complaint.

145. Defendant denies the allegations contained in Paragraph 145 of the Original Complaint.

146. Defendant admits the allegations contained in Paragraph 146 of the Original Complaint.

147. Defendant denies the allegations contained in Paragraph 147 of the Original Complaint.

148. Defendant denies the allegations contained in Paragraph 148 of the Original Complaint.

149. Paragraph 149 is merely Plaintiff's demand for a jury trial and thus no response is required of the Defendant.

150. Defendant denies the allegations contained in Paragraph 150 of the Original Complaint.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
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ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, this 19th day of October, 2023.

Via e-Service and/or facsimile:
Jeff Edwards
State Bar No. 24014406
jeff@edwards-law.com
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ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

ALEX GONZALES SR., and ELIZABETH HERRERA, *Plaintiffs,*	§	
v.	§	**CIVIL ACTION NO. 1:22-cv-00655-RP**
CITY OF AUSTIN *Defendant.*	§	

JESSICA ARELLANO, individually, and as next friend for Z.A., a minor child and wrongful death beneficiary of Alex Gonzales Jr., *Plaintiffs,*	§	
v.	§	**CIVIL ACTION NO. 1:23-CV-00008-RP**
THE CITY OF AUSTIN; GABRIEL GUTIERREZ; and LUIS SERRATO, *Defendants.*	§	

ALEX GONZALES, SR., individually as a "Next Friend" to minor child Z.A.G and ELIZABETH HERRERA (aka Elizabeth Gonzales), Individually and as "Next Friend" to minor child Z.A.G., *Plaintiffs,*	§	**CIVIL ACTION NO. 1:23-CV-00009-RP**
v.	§	
LUIS SERRATO, and GABRIEL GUTIERREZ, *Defendants.*	§	

ORDER GRANTING DEFENDANT CITY OF AUSTIN'S UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED ANSWERS

The Court has considered Defendant City of Austin's Motion for Leave to File Amended Answers in Civil Actions No. 1:22-cv-00655-RP and No. 1:23-cv-8-RP and the Court having considered same and noting no opposition to the motion finds that the motion is well-taken and should be granted.

Accordingly, the Court hereby grants the motion and directs the clerk to file the City of Austin's amended answers attached to its motion in the respective Civil Actions No. 1:22-cv-00655-RP and No. 1:23-cv-8-RP.

SO ORDERED, this _____ day of _____, 2023.

_____
ROBERT PITMAN, UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ALEX GONZALES, SR. AND ELIZABETH HERRERA *Plaintiffs,*	§	
v.	§	**CIVIL ACTION NO. 1:22-cv-655-RP**
CITY OF AUSTIN, *Defendant.*	§	

DEFENDANT CITY OF AUSTIN'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Amended Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint (Doc. No. 60). Pursuant to Rules 8, 12 and 15 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

AMENDED ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' Second Amended Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiffs, Defendant expressly denies that averment. [1]

1. Defendant denies the allegations contained in Paragraph 1.

2. Defendant denies the allegations contained in Paragraph 2.

3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies same.

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Second Amended Complaint.

4. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies same.

5. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies same.

6-10. Defendant admits the allegations contained in Paragraphs 6-10.

11. Defendant denies the allegations contained in Paragraph 11.

12. Defendant denies the allegations contained in Paragraph 12.

13. Defendant denies the allegations contained in Paragraph 13.

14. Defendant denies the allegations contained in Paragraph 14.

15. Defendant denies the allegations contained in Paragraph 15.

16. Upon information and belief, Defendant admits the allegations contained in Paragraph 16.

17. Defendant admits that the quoted language in Paragraph 17 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 17 and therefore denies same.

18. Defendant denies the allegations contained in Paragraph 18.

19. Upon information and belief, Defendant admits the allegations contained in Paragraph 19.

20. Defendant admits that the quoted language in Paragraph 20 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 20 and therefore denies same.

21. Defendant denies the allegations contained in Paragraph 21.

22. Upon information and belief, Defendant admits the allegations contained in Paragraph 22.

23. Upon information and belief, Defendant admits the allegations contained in Paragraph 23.

24. Defendant admits that the quoted language in Paragraph 24 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 24 and therefore denies same.

25. Defendant denies the allegations contained in Paragraph 25.

26. Upon information and belief, Defendant admits the allegations contained in Paragraph 26.

27. Defendant admits that the quoted language in Paragraph 27 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 27 and therefore denies same.

28. Defendant denies the allegations contained in Paragraph 28.

29. Upon information and belief, Defendant admits the allegations contained in Paragraph 29.

30. Defendant admits that the quoted language in Paragraph 30 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 30 and therefore denies same.

31. Defendant denies the allegations contained in Paragraph 31.

32. Defendant denies the allegations contained in Paragraph 32.

33. Defendant admits that the quoted language in Paragraph 33 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 33 and therefore denies same.

34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant admits that the quoted language in Paragraph 35 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 35 and therefore denies same.

36. Defendant admits that the quoted language in Paragraph 36 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 36 and therefore denies same.

37. Defendant admits that the quoted language in Paragraph 37 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 37 and therefore denies same.

38. Defendant denies the allegations contained in Paragraph 38.

39. Defendant admits that the quoted language in Paragraph 39 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 39 and therefore denies same.

40. Defendant denies the allegations contained in Paragraph 40.

41. Defendant admits that the quoted language in Paragraph 41 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 41 and therefore denies same.

42. Defendant denies the allegations contained in Paragraph 42.

43. Defendant admits that the quoted language in Paragraph 43 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 43 and therefore denies same.

44. Defendant denies the allegations contained in Paragraph 44.

45. Upon information and belief, Defendant admits the allegations contained in Paragraph 45.

46. Defendant admits that the quoted language in Paragraph 46 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 46 and therefore denies same.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant admits that the quoted language in Paragraph 48 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 48 and therefore denies same.

49. Defendant denies the allegations contained in Paragraph 49.

50. Defendant admits that the quoted language in Paragraph 50 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 50 and therefore denies same.

51-60. Defendant denies the allegations contained in Paragraphs 51-60.

61-127. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraphs 61-127 and therefore denies same.

128. Defendant admits the allegations contained in Paragraph 128.

129-130. Defendant denies the allegations contained in Paragraphs 129-130.

131. Defendant admits the allegations contained in the first two sentences of Paragraph 131. Defendant denies the remaining allegations contained in Paragraph 131.

132. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 132 and therefore denies same.

133. Defendant admits that the quoted language in Paragraph 133 accurately describes portions of the statement. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 133 and therefore denies same.

134. Defendant admits the allegations contained in Paragraph 134.

135. Defendant denies the allegations contained in Paragraphs 135.

136. Defendant admits that it employed Officer Gutierrez. Defendant denies the remaining allegations contained in Paragraph 136.

137-147 Defendant denies the allegations contained in Paragraphs 137-147.

148. Defendant admits the allegations contained in Paragraph 148.

149-160. Defendant denies the allegations contained in Paragraphs 149-160.

161. Paragraph 161 merely contains Plaintiffs' request for a jury trial and thus no response is required of this Defendant.

162. Defendant denies the allegations contained in Paragraph 162.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird
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ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 19th day of October, 2023.

Via CM/ECF:

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ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JESSICA ARELLANO, individually, and as next friend for Z.A., a minor child and wrongful death beneficiary of Alex Gonzales Jr., *Plaintiff,*	§	**CIVIL ACTION NO. 1:23-CV-00008-RP**
v.	§	
THE CITY OF AUSTIN; GABRIEL GUTIERREZ; and LUIS SERRATO, *Defendant.*	§	

DEFENDANT CITY OF AUSTIN'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

TO THE HONORABLE JUDGE PRESIDING:

Defendant City of Austin ("City") hereby files its Amended Answer and Affirmative Defenses to Plaintiff's Complaint (Doc. No. 1). Pursuant to Rules 8, 12 and 15 of the Federal Rules of Civil Procedure, Defendant respectfully shows the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' Original Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment. [1]

1. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the Original Complaint and therefore denies same.

2. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

contained in Paragraph 2 of the Original Complaint and therefore denies same.

3. Defendant admits that on the date of this incident, Defendant Gabriel Gutierrez was employed as a police officer with the Austin Police Department. Defendant denies the remaining allegations contained in Paragraph 3 of the Original Complaint.

4. Defendant admits the allegations contained in Paragraph 4 of the Original Complaint.

5. Defendant admits the allegations contained in Paragraph 5 of the Original Complaint.

6. Defendant admits the allegations contained in Paragraph 6 of the Original Complaint.

7. Defendant admits the allegations contained in Paragraph 7 of the Original Complaint.

8. Defendant admits the allegations contained in Paragraph 8 of the Original Complaint.

9. Defendant admits the allegations contained in Paragraph 9 of the Original Complaint.

10. Upon information and belief, Defendant admits the allegations contained in Paragraph 10 of the Original Complaint.

11. Upon information and belief, Defendant admits the allegations contained in Paragraph 11 of the Original Complaint.

12. Upon information and belief, Defendant denies the allegations contained in Paragraph 12 of the Original Complaint.

13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of the Original Complaint and therefore denies same.

14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the Original Complaint and therefore denies same.

15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the Original Complaint and therefore denies same.

16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

contained in Paragraph 16 of the Original Complaint and therefore denies same.

17. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 of the Original Complaint and therefore denies same.

18. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 18 of the Original Complaint and therefore denies same.

19. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of the Original Complaint and therefore denies same.

20. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of the Original Complaint and therefore denies same.

21. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 21 of the Original Complaint and therefore denies same.

22. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 of the Original Complaint and therefore denies same.

23. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 of the Original Complaint and therefore denies same.

24. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 24 of the Original Complaint and therefore denies same.

25. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 25 of the Original Complaint and therefore denies same.

26. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 26 of the Original Complaint and therefore denies same.

27. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 27 of the Original Complaint and therefore denies same.

28. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 28 of the Original Complaint and therefore denies same.

29. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 29 of the Original Complaint and therefore denies same.

30. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 30 of the Original Complaint and therefore denies same.

31. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 31 of the Original Complaint and therefore denies same.

32. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 32 of the Original Complaint and therefore denies same.

33. Defendant admits the allegations contained in Paragraph 33 of the Original Complaint.

34. Upon information and belief, Defendant admits the allegations contained in Paragraph 34 of the Original Complaint.

35. Upon information and belief, Defendant admits the allegations contained in Paragraph 35 of the Original Complaint.

36. Upon information and belief, Defendant admits the allegations contained in Paragraph 36 of the Original Complaint.

37. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 37 of the Original Complaint and therefore denies same.

38. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 38 of the Original Complaint and therefore denies same.

39. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 39 of the Original Complaint and therefore denies same.

40. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 40 of the Original Complaint and therefore denies same.

41. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 41 of the Original Complaint and therefore denies same.

42. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 42 of the Original Complaint and therefore denies same.

43. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 43 of the Original Complaint and therefore denies same.

44. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 44 of the Original Complaint and therefore denies same.

45. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 45 of the Original Complaint and therefore denies same.

46. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 46 of the Original Complaint and therefore denies same.

47. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 47 of the Original Complaint and therefore denies same.

48. Defendant admits the allegations contained in the first sentence of Paragraph 48. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 48 of the Original Complaint and therefore denies same.

49. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 49 of the Original Complaint and therefore denies same.

50. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 50 of the Original Complaint and therefore denies same.

51. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 51 of the Original Complaint and therefore denies same.

52. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 52 of the Original Complaint and therefore denies same.

53. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 53 of the Original Complaint and therefore denies same.

54. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 54 of the Original Complaint and therefore denies same.

55. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 55 of the Original Complaint and therefore denies same.

56. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 56 of the Original Complaint and therefore denies same.

57. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 57 of the Original Complaint and therefore denies same.

58. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 58 of the Original Complaint and therefore denies same.

59. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 59 of the Original Complaint and therefore denies same.

60. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 60 of the Original Complaint and therefore denies same.

61. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 61 of the Original Complaint and therefore denies same.

62. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

contained in Paragraph 62 of the Original Complaint and therefore denies same.

63. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 63 of the Original Complaint and therefore denies same.

64. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 64 of the Original Complaint and therefore denies same.

65. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 65 of the Original Complaint and therefore denies same.

66. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 66 of the Original Complaint and therefore denies same.

67. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 67 of the Original Complaint and therefore denies same.

68. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 68 of the Original Complaint and therefore denies same. Defendant admits the allegations contained in the second sentence of Paragraph 68.

69. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 69 of the Original Complaint and therefore denies same.

70. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 70 of the Original Complaint and therefore denies same.

71. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 71 of the Original Complaint and therefore denies same.

72. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 72 of the Original Complaint and therefore denies same.

73. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 73 of the Original Complaint and therefore denies same.

74. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 74 of the Original Complaint and therefore denies same.

75. Defendant denies the allegations contained in Paragraph 75 of the Original Complaint.

76. Defendant denies the allegations contained in Paragraph 76 of the Original Complaint including all subparts thereof.

77. Defendant denies the allegations contained in Paragraph 77 of the Original Complaint.

78. Defendant denies the allegations contained in Paragraph 78 of the Original Complaint.

79. Upon information and belief, Defendant admits the allegations contained in Paragraph 79 of the Original Complaint.

80. Upon information and belief, Defendant admits the allegations contained in Paragraph 80 of the Original Complaint.

81. Upon information and belief, Defendant admits the allegations contained in Paragraph 81 of the Original Complaint.

82. Defendant denies the allegations contained in Paragraph 82 of the Original Complaint.

83. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 83 of the Original Complaint and therefore denies same.

84. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 84 of the Original Complaint and therefore denies same.

85. Defendant denies the allegations contained in Paragraph 85 of the Original Complaint.

86. Defendant denies the allegations contained in Paragraph 86 of the Original Complaint.

87. Defendant denies the allegations contained in Paragraph 87 of the Original Complaint.

88. Defendant denies the allegations contained in Paragraph 88 of the Original Complaint.

89. Upon information and belief, Defendant admits the allegations contained in Paragraph 89 of the Original Complaint.

90. Defendant admits that the language in Paragraph 90 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 90 and therefore denies same.

91. Defendant admits that the language in Paragraph 91 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 91 and therefore denies same.

92. Upon information and belief, Defendant admits the allegations contained in Paragraph 92.

93. Defendant admits that the language in Paragraph 93 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 93 and therefore denies same.

94. Defendant admits that the language in Paragraph 94 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 94 and therefore denies same.

95. Defendant admits that the language in Paragraph 95 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 95 and therefore denies same.

96. Defendant admits that the language in Paragraph 96 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 96 and therefore denies same.

97. Upon information and belief, Defendant admits the allegations contained in Paragraph 97.

98. Upon information and belief, Defendant admits the allegations contained in Paragraph 98.

99. Upon information and belief, Defendant admits the allegations contained in Paragraph 99.

100. Defendant admits that the language in Paragraph 100 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 100 and therefore denies same.

101. Defendant admits that the language in Paragraph 101 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 101 and therefore denies same.

102. Defendant admits that the language in Paragraph 102 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 102 and therefore denies same.

103. Upon information and belief, Defendant admits the allegations contained in Paragraph 103.

104. Defendant admits that the language in Paragraph 104 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 104 and therefore denies same.

105. Upon information and belief, Defendant admits the allegations contained in Paragraph 105.

106. Defendant admits that the language in Paragraph 106 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 106 and therefore denies same.

107. Defendant admits that the language in Paragraph 107 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 107 and therefore denies same.

108. Defendant denies the allegations contained in Paragraph 108 of the Original Complaint.

109. Defendant denies the allegations contained in Paragraph 109 of the Original Complaint.

110. Defendant admits that the language in Paragraph 110 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 110 and therefore denies same.

111. Defendant admits that the language in Paragraph 111 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 111 and therefore denies same.

112. Defendant admits that the language in Paragraph 112 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 112 and therefore denies same.

113. Defendant admits that the language in Paragraph 113 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 113 and therefore denies same.

114. Defendant admits that the language in Paragraph 114 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 114 and therefore denies same.

115. Defendant admits that the language in Paragraph 115 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 115 and therefore denies same.

116. Defendant admits that the language in Paragraph 116 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 116 and therefore denies same.

117. Defendant denies the allegations contained in Paragraph 117 of the Original Complaint.

118. Defendant denies the allegations contained in Paragraph 118 of the Original Complaint.

119. Defendant admits the allegations contained in Paragraph 119 of the Original Complaint.

120. Defendant admits that the language in Paragraph 120 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 120 and therefore denies same.

121. Defendant admits that the language in Paragraph 121 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 121 and therefore denies same.

122. Defendant admits that the language in Paragraph 122 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 122 and therefore denies same.

123. Defendant admits that the language in Paragraph 123 accurately describes portions of the resolution. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 123 and therefore denies same.

124. Defendant admits that the language in Paragraph 124 accurately describes portions of the report. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 124 and therefore denies same.

125. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 125 of the Original Complaint and therefore denies same.

126. Defendant denies the allegations contained in Paragraph 126 of the Original Complaint.

127. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 127 of the Original Complaint and therefore denies same.

128. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

contained in Paragraph 128 of the Original Complaint and therefore denies same.

129. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 129 of the Original Complaint and therefore denies same.

130. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 130 of the Original Complaint and therefore denies same.

131. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 131 of the Original Complaint and therefore denies same.

132. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 132 of the Original Complaint and therefore denies same.

133. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 133 of the Original Complaint and therefore denies same.

134. Defendant admits the allegations contained in Paragraph 134 of the Original Complaint.

135. Defendant adopts and incorporates its responses to the previous paragraphs of the Original Complaint.

136. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 136 of the Original Complaint and therefore denies same.

137. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 137 of the Original Complaint and therefore denies same.

138. Defendant admits the allegations contained in Paragraph 138 of the Original Complaint.

139. Defendant denies the allegations contained in Paragraph 139 of the Original Complaint.

140. Defendant denies the allegations contained in Paragraph 140 of the Original Complaint.

141. Defendant denies the allegations contained in Paragraph 141 of the Original Complaint.

142. Defendant denies the allegations contained in Paragraph 142 of the Original Complaint.

143. Defendant denies the allegations contained in Paragraph 143 of the Original Complaint.

144. Defendant denies the allegations contained in Paragraph 144 of the Original Complaint.

145. Defendant denies the allegations contained in Paragraph 145 of the Original Complaint.

146. Defendant admits the allegations contained in Paragraph 146 of the Original Complaint.

147. Defendant denies the allegations contained in Paragraph 147 of the Original Complaint.

148. Defendant denies the allegations contained in Paragraph 148 of the Original Complaint.

149. Paragraph 149 is merely Plaintiff's demand for a jury trial and thus no response is required of the Defendant.

150. Defendant denies the allegations contained in Paragraph 150 of the Original Complaint.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird III
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ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, this 19th day of October, 2023.

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ATTORNEYS FOR PLAINTIFF

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