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Tuesday, June 23, 2020

Robin S. Engel, Ph.D

Professor of Criminal Justice at the University of Cincinnati

Robin S. Engel, Ph.D is Professor of Criminal Justice at the University of Cincinnati (UC) and Director of the *International Association of Chiefs of Police / UC Center for Police Research and Policy*. She received her doctorate in criminal justice from the University of Albany in 1999. Dr. Engel engages in police research and evaluation, with expertise in empirical assessments of police behavior, police-community relations, and crime reduction strategies. She promotes best practices in policing by establishing academic-practitioner partnerships, and has served as Principal Investigator for over eighty research grants, totaling nearly twenty million dollars. She has published over sixty research articles, books, and book chapters, along with dozens of technical reports for practitioners, and has been ranked among top academics, and the number one female in the field of criminal justice/criminology based on publications in prestigious peer- reviewed journals. She has expertise in conducting empirical examinations of racial/ethnic disparities in police stops, arrests, and use of force with over a dozen police agencies, along with direct experience working to rebuild police-community relationships in the aftermath of controversial police uses of force. Her work on violence reduction resulted in several prominent team awards including the *2008 IACP/Motorola Webber Seavey Award for Excellence in Law Enforcement*, the *2009 IACP/West Award for Excellence in Criminal Investigations*, and the *2008 National Criminal Justice Association's Outstanding Criminal Justice Program Award*.

She has served as an expert on policing and violence reduction on panels convened at the White House and 10 Downing Street. In 2017, Dr. Engel was awarded the *Distinguished Alumni Award* from the School of Criminal Justice at the University of Albany. In 2018, she was appointed by Governor John Kasich to the *Ohio Collaborative Community-Police Advisory Board,* and reappointed in 2019 by Governor Mike DeWine. She currently serves as the co-chair of IACP's *Research Advisory Committee*.

From 2015-2018, Dr. Engel served as Vice President for Safety and Reform for the University of Cincinnati, where her administrative duties included oversight of the daily operations and implementation of comprehensive reform efforts of the University of Cincinnati Police Division (UCPD) in the aftermath of a critical incident involving the fatal police shooting of an unarmed motorist, stopped for a minor equipment violation off-campus. She was charged with the design and implementation of systematic university police reform, including substantial changes to police leadership, policies, training, and practices, along with the development of a Community Advisory Council, and the rebuilding of community trust. After the UCPD was found in substantial compliance of 275 recommendations by an external expert monitor team, Dr. Engel returned to her faculty position within the School of Criminal Justice. She is currently working on best practice guides, peer-reviewed articles, and other materials regarding her experiences with urban police reform. She currently leads an international research center designed to bridge the gap between research and practice, and promote the use of empirical evidence in police practices.

**Robin S. Engel, Ph.D., Professor, School of Criminal Justice, University of Cincinnati
Director, IACP / UC Center for Police Research and Policy**

Introduction. In recent weeks, U.S. law enforcement officers have been faced with a set of unprecedented circumstances, navigating major social unrest in communities across the country, amid a pandemic and economic crisis. Combined, these events have created a volatile environment for police officers, although the underlying refrain regarding troublesome police practices and excessive use of force has been consistently voiced – particularly by minority populations – for decades.

Acknowledging the dangers to both citizens and officers embedded in this current police-community relations crisis, efforts have again intensified to identify "solutions" to reduce the frequency and severity of violent encounters between police and the public. These were the same concerns facing our country just over five years ago amid a spate of police-involved deaths of unarmed black males and the resulting civil unrest following controversial police use of force in Ferguson, MO, in 2014, followed by the killings of police officers in the line of duty in Dallas and Baton Rouge in 2016. In 2015, the *President's 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 – and over 150 recommendations and proposed action items for reform. While this work provides a promising roadmap for a path forward, it is important to note that many of the proposed recommendations are *not* evidence-based, in part because the need for rigorous data collection and analysis to assess the utility of these reforms in real world applications has not been prioritized. A literature review conducted by Lum and colleagues (2016) confirms the substantial lack of research supporting most of the task force recommendations for technology and training, making it difficult to draw strong conclusions about what should be prioritized among these recommendations. Further, for the recommendations and action items that have a larger evidence base, research findings were often mixed (community policing; building trust and legitimacy) or required additional research to provide meaningful assessment (policy and oversight; officer wellness).

Given the realities of policing, most reform efforts specifically thought to reduce use of force are largely divorced from the expectation that they are evidence-based. Law enforcement executives are responsible for crisis management, regardless of the availability of scientific evidence to support critical decisions. As such, they are judged by the speed, rather than the quality, of their response to various stakeholder demands. With these constraints, the careful planning of an evidence-based response for police reform is often unrealistic. Rather, recommended police reforms likely do more in the way of "damage control" after a critical incident than actually preventing future use of force or fatal police-citizen encounters.

Building upon previous efforts, the field must now focus on: (1) generating the political will necessary to mandate and implement policing reforms, (2) providing the necessary technical assistance, training, and oversight for agencies that need additional resources to implement the reforms, and (3) developing a comprehensive plan to systematically test the impact of these proposed solutions to ensure their effectiveness, and make routine adjustments based on the accumulating evidence. My testimony focuses on the third consideration – specifically as it relates to police use of force – by documenting the significant gaps in knowledge regarding the effectiveness of most recommendations, and provide three specific recommendations to address the urgent need to advance this body of knowledge. **If the profession is serious about: (1) reducing racial/ethnic disparities in police outcomes, (2) reducing the frequency and severity of police use of force, (3) improving police-community relations and**

perceptions of police legitimacy, and (4) enhancing the overall effectiveness, efficiency, and equity of police practices, then it must heavily invest in the scientific testing and evaluation of its reform efforts.

The Role of Evidence in Police Reform. At its core, Evidence Based Policing (EBP) encourages the use of research to guide practice and evaluate practitioners. Seeking to progress beyond the use of anecdotal or experiential evidence alone, EBP suggests that police decision-making on "what works" to address specific problems should be guided by objective facts produced from scientific research. Further, EBP encourages police to embed science within their respective agencies through the evaluation of current policies and practices. Police agencies that use and generate research to guide strategic and tactical decision-making should experience greater success in identifying cost-effective approaches, and improving police-community relations. It is now widely recognized that EBP is critical for successful reform across a number of policing outcomes, including the reduction of the frequency and severity of police use of force during encounters with civilians.

Of the litany of recommendations currently promoted to reduce police use of force, five have garnered the most widespread support: body-worn cameras, de-escalation policies and training, implicit bias training, early intervention systems, and civilian oversight of the police. These highly endorsed interventions, however, are *not* supported by a strong body of empirical evidence demonstrating their effectiveness. Rather, the body of social scientific research supporting the effectiveness of most of these initiatives is generally thin and, in some cases, nearly nonexistent. A summary of the findings from our published review of the evidence (Engel, McManus, & Isaza, 2020) is presented below.

Body-worn cameras. A recent study using a nationally representative sample of police agencies estimated that one-third currently deploy BWCs to some or all of their officers, and an additional 50 percent of agencies have immediate plans to deploy them (Police Executive Research Forum, 2018). Proponents have argued that the deployment of BWCs should reduce police use of force, and racial/ethnic disparities in that force. However, a comprehensive review of the available research on BWCs identified 16 out of 70 studies that measured changes in use of force following the deployment of BWCs, and reported inconsistent findings regarding their impact (Lum et al., 2019). Collectively, this research suggests that simply outfitting officers with BWCs is insufficient to significantly reduce use of force.

De-escalation policies and training. De-escalation use of force policies and training are widely viewed as a common-sense approach, designed specifically to reduce the frequency/severity of force, and associated officer and citizen injuries. De-escalation policies and training are not without critics, however, with some voicing concerns about risks to officer safety. These concerns are amplified by the ambiguity of de-escalation policies and training, as there is no uniformly accepted definition of de-escalation within the policing field, and little is known about the development, delivery, and impact of police de-escalation training. A recent multidisciplinary systematic review showed that while a limited number of de-escalation trainings were evaluated across professions ($n = 64$, most studies appear in the fields of nursing and psychiatry), *no evaluations* within policing or the criminal justice field were identified (Engel, McManus, and Herold, 2020). As a result, recommendations for de-escalation, as well as larger conversations on the safety and well-being of police officers and the individuals they encounter, continue to rely heavily on anecdotal evidence and untested propositions about best practice.

Implicit bias training. Based on the supposition that differences in policing outcomes are the result of individual police bias or discrimination, the operational response to reducing racial disparities in police use of force has consistently involved the provision of additional training for officers (e.g., racial profiling/racial sensitivity training in the 1990s, bias-free policing training in the 2000s, and most recently, implicit bias training). While a meta-analysis of nearly five hundred studies (conducted in other fields) identified that implicit bias is malleable (albeit with relatively weak effects), changes in implicit

bias measures may not necessarily translate into changes to explicit bias or in behavior (Forscher et al. 2018). Collectively, this research presents a mixed picture regarding the likely impact of implicit bias training on both changes in attitudes and behavior. For the policing field specifically, other than an on-going study of implicit bias training for the NYPD (see Engel & Meisenholder, 2020) *no experimental evaluations of implicit bias training for police officers have been reported.* In short, agencies across the country are training officers in implicit bias without evidence that this training leads to changes in officers' attitudes or behaviors that may reduce racial/ethnic disparities. For most police executives, however, the cost-benefit analysis for providing implicit bias training may hinge on whether they perceive that their agency will receive a boost in community trust and improve police-community relations, rather than any expected changes in police officers' attitudes and behaviors due to the training.

Early intervention systems. Another frequently mentioned opportunity for reducing problematic police behavior is the implementation of early intervention systems (EIS), also referred to as early warning systems. EIS are data-driven administrative systems used to detect officer misconduct. Among many, EIS are now considered a "best practice" for police accountability, particularly regarding officer use of force. The use of EIS is not without criticism, however. The ability of systems to accurately identify problematic officers is a primary concern. A recent review of EIS evaluations (Worden et al. 2018) identified only six evaluations appearing in four research studies examining the impact of agencies' EIS interventions on citizen complaints against officers, officer use of force, and officer arrest activity. Overall, the evidence supporting the use of EIS as a mechanism to decrease officer use of force is not strong. The limited number of evaluations, combined with weak research designs, and the limited scope of the outcomes examined leaves many questions surrounding the positive effects, as well as the potential unintended consequences, of EIS interventions.

Civilian oversight. A final popular call to reduce officer use of force includes multiple forms of community engagement and citizen oversight of the police. From a broad perspective, these oversight mechanisms are typically recommended to increase police transparency and accountability, as well as help to build trust and perceptions of police legitimacy within the community. Research on the prevalence of civilian oversight, particularly in the form of civilian review boards, suggests oversight is fairly common among large police agencies, with approximately 80 percent of the fifty largest U.S. police agencies incorporating such oversight mechanisms (Lum et al. 2016), but much less common in mid- to small-size agencies. Furthermore, significant variation in the composition and role in oversight processes are observed among the civilian review boards that exist. Despite calls for research, the evidence for civilian oversight of police agencies remains limited. The extreme variability across civilian review boards has proven a difficult hurdle in the examination of the prevalence, effects, and best models for oversight. Collectively, this small body of research provides mixed findings regarding the sustained rates of citizen complaints when civilian oversight is present.

Recommendations. In addition to these five commonly recommended police reforms highlighted above, a comprehensive review of all of the recommendations provided within the Task Force's final report demonstrate a similar lack of evidence (Lum et al., 2016). Based on a recognition that recommended police reforms should be – but currently are not – based on scientific evidence, three additional recommendations are proposed to the Commission for further consideration.

1. Work to standardize and mandate the collection of use of force data should continue, while also prioritizing the collection of additional information. Many have raised issues regarding the need for science to improve policing, and this requires the availability of valid data. The significant deficiencies in police use of force data have been routinely noted, and several viable approaches to systematically collecting use of force data have been previously proposed or endorsed. Rather than rehash these proposed solutions, the need to establish a national database that standardizes the reporting of police use of force is recommended. Further, the collection of such data should be mandatory in terms of reporting

to an external source (such as the FBI) so that the necessary analytics can be used to extract a broader understanding of the circumstances surrounding how use of force incidents unfold. In addition, the systematic collection of other factors during police-civilian encounters that will enhance our understanding of what works to reduce officer and citizen injuries, including for example, the use of de-escalation tactics/skills, suspected civilian drug/alcohol use, mental health status, etc. should be included. Gathering this type information provides opportunities to improve training and interventions by officers during encounters involving substance-using populations or those showing signs of mental illness, intellectual or developmental disabilities, etc.

2. Scientific standards regarding the analysis of use of force data should be established and additional research using new methods and data supported. Mandating the collection and reporting of police use of force data is insufficient to significantly change police practice; these data, once collected, must be properly analyzed. Simply stated, the current aggregate level comparisons of use of force data to residential Census population figures by racial/ethnic group do not consider the complexity of police-citizen interactions and should not be relied upon. Rather, rigorous and methodologically sound studies of use of force provide a stronger mechanism to examine and statistically control for context at the police-civilian encounter level. For example, to interpret rates of police use of force, the percent of various racial/ethnic groups who experience force are commonly compared to the same groups' representation in population statistics, known as a benchmark. This comparison group, however, is supposed to represent similarly situated people at risk of experiencing force, assuming no officer bias exists. The difficulty with this type of comparison is that Census data (the most readily available and commonly used benchmark) do not measure the types of characteristics that research shows put individuals at risk of experiencing force – including a number of legal and extra-legal characteristics, but especially civilians' legally relevant behaviors including resistance, presence of a weapon, and criminal behavior. A body of evidence using more rigorous methods has examined the impact that multiple factors have on use of force during officer-civilian interactions, including situational/legal factors, along with civilian, officer, organizational, and community characteristics. Across varied study designs and measures of officer use of force, civilians' resistance and other legal factors (e.g., presence or use of a weapon, evidence of criminal behavior) are consistently the most important factors explaining whether force is used and the severity of that force; however, these factors are not included in benchmark comparisons.

In particular, the influence of civilians' race in both lethal and non-lethal force events has revealed mixed results (some studies report race effects, while others do not). When civilians' race is found to predict police use of force, the impact of race is often mitigated once other factors are considered; any remaining race effects are typically of lesser magnitude when compared to other factors. In summary, while most studies find racial/ethnic disparities in police use of force, the reasons for these disparities are multifaceted, and it is imperative to disentangle other critical factors (e.g., civilian resistance, neighborhood characteristics, etc.) to determine if disparities are the result of officer discrimination. If the goal is to reduce racial/ethnic disparities in police practices, the factors that cause these disparities must be understood to better inform the selection and investment in reforms efforts that have a realistic opportunity to reduce these disparities.

In order to better unravel the micro-level interactions between officers and civilians, a number of researchers are now exploring content-rich data sources like observations, report narratives, body worn camera footage, and interviews with officers and civilians to examine the "force factor" (i.e., the level of civilian resistance subtracted from the officer level of force), and other measures like time to force and duration of force. These types of research studies can identify any type of post-Ferguson era paradigm shift in the use of force as agencies across the country have focused on de-escalation training, and changes in use of force policies designed to reduce not only the frequency but the *severity* of force used. This important work must be prioritized and financially supported at the federal and state levels, and embraced by law enforcement executives.

3. The study of the impact of current reform efforts – and in particular de-escalation policies and training – must be prioritized. Widely supported across various stakeholders, and endorsed by experts and academics, the call for de-escalation policies and training are particularly strong, and the field has responded. As noted above, however, there is wide variation in training concepts, content, delivery method, and dosage across trainings; yet the effectiveness – and possible unintended consequences – of these changes in policy and training are unknown. Currently, there are four on-going or forthcoming randomized controlled trial (RCT) design studies examining police de-escalation training.[1] Initial findings from at least three of these studies show that although the various de-escalation trainings demonstrate changes in officers' reported attitudes and knowledge regarding the use of de-escalation tactics and skills, the trainings are *not* associated with changes in behavior in the form of reductions in the frequency or severity of use of force, or reductions in officer or citizen injuries. These initial null findings underscore the difficulty in changing behavior based solely on training. Rather, it is clear that actual changes in policing must be based on coordinated and comprehensive reform efforts that include changes in training that are reinforced in policies, emphasized through direct field supervision, with an established managerial accountability system for using these tactics – all of which needs to be tested.

Moving forward, it is imperative to better understand and systematically assess the impact of changes in police policies and trainings, and in particular, use of force de-escalation training. It is further critical to determine which de-escalation skills are most often used in the field, during what types of encounters, by what types of officers, and their resulting impact on officer/citizen injury. This work must be prioritized and supported at the federal, state, and local levels.

Conclusion. Currently, recommended police reforms likely do more in the way of "damage control" after a critical incident than actually preventing future fatal police-citizen encounters. Transitioning the field from "best practice" to "evidence-based practice" has the greatest opportunity for reducing officer and citizen injuries and fatalities – and should be the collective top priority. To accomplish this goal, more must be expected from both police executives and the research community. Law enforcement executives have a moral and ethical responsibility to collect and analyze data to generate evidence on the delivery and effects of their practices – police agencies most move beyond being consumers of research toward engaging in the production of knowledge. To facilitate the implementation of evidence-based approaches to reduce officer-involved shootings, police executives must consider findings from available research, and where evidence is lacking, engage to fill that void. These efforts must be supported through federal and state-level commitments to provide resources for technical assistance, training, and research that can be used to implement and evaluate these reforms.

In the absence of evidence, police executives must still respond to the mounting tensions and citizen demands for reform. Political officials across the country are quickly moving forward, demanding that police executives make changes to policing practices that may be ill-advised, unsupported, and produce unintended consequences. Within this context, it is imperative that assistance is quickly delivered to our law enforcement community by generating evidence to support what works in policing. The implementation of innovative approaches must be combined with continuous review and testing to identify ineffective practices and unintended consequences. There is an urgent need to support researchers who work collaboratively with police executives to generate and disseminate knowledge regarding the effectiveness of police reform efforts. The safety of our nation's police officers, and members of the public they serve, hinges on this collective work.

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[1] These studies are being conducted by four separate research teams, examining the impact of different de-escalation trainings in Fayetteville, NC and Tucson, Arizona; Louisville, KY; Tempe, AZ; and six cities within the UK. At this time, the findings from only one study have been made publicly available (see Wolfe et al., 2020).

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Michael D. Ranalli

Chief (Ret.), Glenville, NY Police Department

Michael D. Ranalli, JD, retired as Chief of the Glenville, New York, Police Department after having served in that capacity from June 2006 until June 2016. Chief Ranalli began his career in 1984 with the Colonie, New York, Police Department and held the ranks of patrol officer, sergeant, detective sergeant and lieutenant. He was also a member of the Colonie Special Services Team (tactical team) for 12 years, the last two serving as the tactical commander. In May 2016 he was appointed Program Manager II for Lexipol, LLC.

Chief Ranalli is a frequent presenter and author on various legal issues including search and seizure, use of force, legal aspects of interrogations and confessions, wrongful convictions, supervision and leadership and civil liability. He is author of *Search and Seizure Law of NYS: Street Encounters 3rd Edition,* published by Looseleaf Law Publications, Inc. He is also the editor of *Civil Liabilities of New York State Law Enforcement Officers, 4th Edition,* by the same publisher. He is a consultant/instructor on police legal issues to the New York State Division of Criminal Justice Services and has taught officers around New York State for the last fifteen years in that capacity.

Chief Ranalli is a past president of the New York State Association of Chiefs of Police (NYSACOP) and writes the Counsel's Corner column for the NYSACOP periodical The Chiefs Chronicle. He is a member of the IACP Professional Standards, Image & Ethics Committee, and the former Chairman of the New York State Police Law Enforcement Accreditation Council. He is also a graduate of the 2009 F.B.I.-Mid-Atlantic Law Enforcement Executive Development Seminar and is a Certified Force Science Specialist.

He holds a bachelor's degree in criminal justice from the State University of New York, Utica/Rome and a Juris Doctorate from Albany Law School. He is admitted to the New York State Bar and the Federal Bar (Northern District of New York).

President's Commission on Law Enforcement and the Administration of Justice – Hearing June23, 2020

Testimony of:
Chief Michael D. Ranalli (Retired) Town of Glenville (NY) Police Department
Past President and current advisor to the New York State Association of Chiefs of Police (NYSACOP)
Program Manager, Lexipol

Regarding:
Understanding the Need for the *Graham v. Connor* Objective Reasonableness Standard

I am providing testimony to the commission in my role as a Past President and current advisor to NYSACOP. In addition to a 32-year career as a police officer, I have been an attorney and police trainer for the last 30 years. It has been my goal to continuously strive to find new ways to teach complicated and difficult information that allow for lasting behavioral change. As a result, I am an advocate for change, but only when it makes sense and when it will address the underlying problems and issues.

There is no contemporary law enforcement topic more important than the use of force.

Over the past few years there have been increased calls to modify or eliminate by law and/or policy the "objective reasonableness" standard of *Graham v. Connor.* The California Legislature, for example, initially drafted a bill that would have allowed deadly physical force only when it was "necessary" (that language was amended in the final version of the legislation). The current United States House of Representatives bill H.R. 7120 (The "George Floyd Justice in Policing Act of 2020") would modify the standard for deadly physical force for federal police officers and alter the standards for qualified immunity. Due to time and content restraints for this testimony to the commission, I will focus solely on the need to retain the objective reasonableness standard and avoid changing the standard to only force that is "necessary, as a last resort."

To the average person, this suggested language may appear reasonable. But restricting force to that which is "necessary" ignores the fact that things are not always as they appear. This language assumes that human beings – police officers – will 1) immediately have all the information necessary to them to make a decision and 2) have the mental capacity under stress to make the correct decision. In a perfect world, with the time to carefully analyze all the aspects of a situation, the revised language would make sense. But of course, we do not live in a perfect world.

The language "reasonably believes" or "reasonably necessary" flows from the Supreme Court of the United States and the seminal decision of *Graham v. Connor,* 490 U.S. 386 (1989). The court recognized that officers need to make split-second, life-or-death decisions that are not capable of precise definition or mechanical application. Such decisions are to be judged from the perspective of a reasonable officer on the scene and not with the benefit of hindsight. The objective reasonableness standard accepts the reality that officers must make the best call they can with whatever information is available to them, and sometimes that call will turn out to be wrong. Changing the standard to only that force which is necessary would reject this reality and make officers strictly liable should they reasonably but mistakenly perceive a threat.

The goal of my testimony and submission will be to help the commission expand their understanding of what the objective reasonableness standard really is and why officers (and humans in general) can be

wrong about a situation. I will also provide some suggestions toward the goal of reducing the number of tragedies involving law enforcement use of force.

What Does "Objectively Reasonable" Really Mean?

As a trainer, I strive to find simple, everyday life examples to help officers understand complex legal concepts. Use of force and objective reasonableness is one of those complex legal concepts.

Consider a simple analogy: I was driving down a city street with cars parked on both sides of the road. Out of my peripheral vision I noticed a blur of rapid motion heading toward the roadway and directly into the path of my vehicle. As happens in human beings when they have limited time to respond to a perceived threat or problem, my mid-brain took over and my foot immediately depressed the brake pedal. This occurred without conscious or cognitive thought processes. Instead, the emergency response humans have developed to help us survive immediate threats activated and responded. Our mid-brain essentially processes the visual stimuli and places it quickly in context, which in this setting was that it could be a child, an animal, or something that could damage the vehicle and potentially cause an accident. As a result, I slammed on the brakes without "thinking" about it. And then I watched the plastic shopping bag blow across the road in front of me, unharmed by my vehicle.

My mid-brain was obviously wrong, and it was not "necessary," with hindsight, for me to react that way. But my brain did exactly what it is programmed to do. Under the perceived circumstances and a lifetime of learning and defensive driving courses, the response was objectively reasonable. To change the standard in law will not change the reality of human intuitive and heuristic response, and therefore will not address any underlying problems.

Understanding Human Fallibility and Limitations
In so many areas of our society, we tacitly take for granted that humans are prone to mistakes when faced with rapidly evolving situations. So why do so many people fail to consider human error when evaluating police use of force?

Professional referees and umpires are highly trained and have a singular focus during game play, yet rarely does a (pre-COVID-19) weekend go by without an example of a missed call. That so many sports now incorporate instant replay is an acknowledgement that even the most experienced, most focused referee can miss vital details of a rapidly evolving situation.

Curiously, however, we as a society seem reluctant to admit the same phenomenon happens with law enforcement officers—even though the situations officers face are far more stressful and unpredictable.

Think about it: The existence of instant replay in professional football, baseball and basketball is an outright acknowledgment that humans are fallible. Even without instant replay, professional referees and umpires already have an advantage that police officers do not – the ability to confer and consult with each other after a call is made and reverse the call if appropriate.

There are some who will bristle at this comparison: *"The police can take a life; how can you compare that situation with a game?"* But the fact that a use of force decision can have life-or-death consequences does not change the reality of human fallibility, especially when under stress. The question really should be, how can we place police officers in such critical situations and hold them

strictly accountable for reasonable perceptions when we are surrounded in everyday life by the reality of human shortcomings?

"But the police are trained to make such decisions!" Oh, really – are they? Most high school athletes will receive more skills training in their sport than most police officers will receive in their entire career. In New York, we give officers about six months of basic training, which includes 40 to 48 hours of defensive tactics training, 48 hours of firearms training, and, depending upon the size of the agency and/or the academy, limited scenario-based role playing and decision making. To be generous, call it about 140 hours of skills training. Then, officers graduate and face the realities of police work in which those skills are infrequently used. As these are perishable skills, officers may not have sufficient mastery to efficiently and effectively apply a necessary skill. If we are going to start holding our officers strictly accountable, then perhaps we need to follow the special forces model and require officers to attend an additional 18 months of specialized training. This would not be a popular option in an environment where there are multiple demands upon tax dollars.

What exactly happens to cause a highly trained NFL official to miss an obvious call or an officer to miss key details during a use of force incident? The first explanation is that a person's gaze is very limited, approximately 2-3 degrees of visual angle. In other words, you can only clearly see what you are looking directly at.

These errors are also examples of a phenomenon called "inattentional blindness," the title of Arien Mack and Irvin Rock's ground-breaking book published at MIT in 1998 and subsequently made famous by the "invisible gorilla" video. In the video, six people in two teams of three pass a basketball back and forth. Team members are dressed in either a black or white t-shirt. The subjects watching the video are instructed to count the number of passes made by the team in white. During the video, a person dressed in a gorilla suit passes through the players and pounds his chest. The typical result of this experiment is that half of the study participants do not see the gorilla at all.

How can that be? The subjects were engaged in a specific search task. Our gaze and attentional load is limited, and when faced with complex tasks or situations we must decide what to attend to and when. It is not only entirely conceivable, but it is also predictable that NFL officials facing a complex play, with so many different things drawing their attention, will miss something. Police officers, when faced with potentially dangerous situations, have the same attentional load limitations. There is only so much that they can "see," and, as frequently happens in real-life examples, officers can miss things that, in hindsight, are obvious.

To hold officers strictly accountable by strict law and/or policy language will not change the reality that their attentional load is limited. And this does not even take into consideration other environmental factors an officer may face that can impact decision-making, such as inadequate lighting, inclement weather and the presence of factors known to the officer entering the situation (e.g., encountering a person near the scene of a "shots fired" call).

To add to the problems of limited attentional load, there is also the impact of stress on human physiology. Professional umpires and referees work under periodic mild to moderate stress, but police officers involved in deadly force incidents are subject to extreme stress.

When we perceive a threat, a complex process immediately commences in the brain, resulting in the release of adrenaline and cortisol. These substances help prepare the body for fight or flight, a response

that has allowed our species to survive predatory attacks. But side effects of this process can impede an officer's ability to properly perceive all available stimulus and react accordingly. Side effects of the fight-or-flight response include:

- Selective attention, also known as tunnel vision. There will be an immediate tendency to focus on the perceived threat, to the exclusion of all other stimuli. As a result, the officer may fail to perceive peripheral activities.
- Auditory exclusion. This is the hearing equivalent of tunnel vision. People operating in high-stress situations may hear sounds and voices as muffled or distant—or may lose hearing entirely.
- Loss of motor skills. Under high levels of stress, officers can begin to lose their gross motor skills, which can compromise their ability to effectively use their firearm or apply some type of defensive tactic technique.

Addressing the Underlying Issues

Let us go back for a moment to my trip down a city street and my encounter with a shopping bag. What if I was speeding and distracted at the time? Would that change the fact that—at the precise moment in time that my brain perceived the movement and processed the possible risks—the response was objectively reasonable? The answer is no. But this is the underlying source of what is called by some as the "lawful but awful" cases.

Changing the *standard* will not change the underlying need to survive and the reality of human response to a threat. Instead, what we need to do is focus on why officers may be getting into these situations in the first place. Why was I speeding and distracted? Were the underlying factors a failure of the individual or the organization? After we accept the realities of human response, we then need to identify the areas officers are exposed to that can lead to tragic responses. From my years of research and training, I submit the following suggestions for your consideration.

- *Increase funding for street-level mental health response units such as mobile response teams*. Over the course of my career I saw the closing of institutions and the transition of front-line mental health response to law enforcement. This is a task that law enforcement did not ask for nor were they prepared for. Crisis intervention training certainly has helped, but there needs to be a more permanent solution instead of the crisis-by-crisis response. These encounters are the source of numerous tragedies.
- *Make police training requirements and standards a national priority*. When municipal budgets are lean, which they almost always are, one of the first areas of "discretionary" spending to be cut is training. This is typically not a voluntary decision of the chief or sheriff but rather is a municipal board decision. Training must be treated as a priority and municipalities need to be incentivized to require and fund training.
- *Training must make sense, be consistent and be evidence based*. Individual tragic cases have tendrils of old and dangerous training artifacts. Whenever a tragic situation occurs somewhere in the country a chief or sheriff must look critically at the tactics used by the officers. Do they make sense? Were they based on flawed assumptions and a misguided attempt at increased officer safety? Could it happen in your agency?
- *Training must be founded on decision making and funding for such training must be provided*. An example is funding for virtual simulation products that not only teach shoot/don't shoot decisions, but feature scenarios that allow for different responses based upon the officer's

actions. While shooting skills are always important, our profession may have relied too much on that method.

- *Leadership training should include and encourage the ability to look at a tragic incident or "near-miss" and discern with an open mind.* Was it an individual failure or an organizational failure? Placing blame on an individual officer does nothing if the officer was not provided with the tools or knowledge to properly handle a situation, resulting in the possibility another officer could do the same thing.
- *An increased focus on individual responsibility of persons being placed under arrest.* This needs to be said. I understand there are complex reasons why some people choose to resist lawful arrests. But the unfortunate reality is that when people violently resist, flee or refuse to obey commands, they play a role in escalating the situation, too.

Thank you for your time and consideration.

Terry L. Sult
Chief of Police, Hampton VA

Chief Sult began his career with the Charlotte Police Department in June of 1977 as a police dispatcher and one year later became a sworn officer. He served in numerous assignments including patrol, homicide, task forces as well as developing and supervising the street drug interdiction unit with the merged Charlotte-Mecklenburg Police Department (CMPD). He went on to become commander of the CMPD Intelligence Unit with duties that included gang and RICO investigations. Promoted to Captain, he was assigned as Director of CMPD's Strategic Planning and Analysis Unit where he was responsible for development of security and preparedness planning for Charlotte's Center City.

In Aug 2004, Captain Sult accepted the position of Chief of Police for the City of Gastonia, N.C. where he served for over four years. While there, he was instrumental in establishing the departments Citizen Police Academy and the "Citizens on Patrol" program.

In October 2008, the City of Sandy Springs, Georgia selected Sult to be their next Police Chief. During his tenure, he was instrumental in the start-up of the Chattahoochee River 911 Communications Authority, a multi-jurisdiction multi-discipline 911 Communications Center formed through a unique public-private partnership. In March 2013, Chief Sult was promoted to Director of Public Safety for the City of Sandy Springs where he coordinated services for Police, Fire and Emergency Management.

In September 2013, Sult was appointed Police Chief of the Hampton (Virginia) Police Division. Since that time, he has implemented the Body Worn Camera project, the Division's first Real Time Information Center and is currently working to upgrade the 911 Communications Center using the latest technologies. He has also strengthened the Division's community policing philosophy by promoting organizational strategies that support building public and private partnerships and problem-solving practices.

Chief Sult holds an Advanced Law Enforcement Certificate as a certified officer through the North Carolina Criminal Justice Training and Standards Council. He is certified both as a police officer and chief of police through the Georgia Police Officer Standards and Training. Chief Sult holds a Bachelor's Degree in Criminal Justice from Gardner-Webb University and a Master's in Business Administration from Pfeiffer University. He is a graduate of North Carolina State University's Administrative Officers' Management Program and Senior Management Institute of Policing from Harvard University's Kennedy School of Government and the Police Executive Research Forum.

Jeffrey Kruithoff

Chief, Springboro, OH, Police Department

Chief Jeff Kruithoff started his law enforcement career in 1972 and retired in 2001 from the Battle Creek Michigan Police Department as the Chief of Police/Director of Police and Fire Services. He has served City of Springboro Ohio as Chief of Police since 2002.

Chief Kruithoff holds a Master's Degree in Public Administration from Western Michigan University. He is a Graduate of the 165th Session of the Federal Bureau of Investigation National Academy, and became certified as a Law Enforcement Executive through the Ohio Police Foundation in February of 2004.

Chief Kruithoff served as an Incident Commander for the State of Ohio, All Hazard's Incident Management Team, which deployed to Hurricanes Katrina, Ike, and Irene, the Findley flood, the Paynesville train derailment, Ohio University's Halloween festival as well as a number of planned training disasters or large events. In 2014 Chief Kruithoff stepped down from the team and has responded to hurricanes, floods, mass shootings, civil disorders, and police officer homicides as a Rapid Response Chaplain for the Billy Graham Evangelical Association. He serves on the Executive Board for the FBI National Academy Associates as the National Chaplain.

Chief Kruithoff is a member of the Ohio Chiefs of Police; a Life Member of the International Chiefs of Police Association; the Police Executive Research Forum; and the FBI National Academy Associates. Ohio Governor Kasich appointed him in 2011 as a Commissioner to the Ohio Organized Crime Investigation Commission; which oversees the investigation of organized crime in the State of Ohio. He is currently serving his fourth Governors appointment, which expires in 2021. Chief Kruithoff was names Police Officer of the Year by the Miami Valley Crime Solvers in 2007, and Ohio Police Executive of the Year in 2014 by the State of Ohio D.A.R.E. Association, and in 2018 received the Alumni Leadership Award by the Certified Law Enforcement Executive Board of the Ohio Chiefs of Police.

SPRINGBORO OHIO
POLICE DEPARTMENT

JEFFREY P. KRUITHOFF
CHIEF OF POLICE

Presidents Commission
Law Enforcement and the Administration of Justice

Dear Commission Members,

I appreciate the opportunity to submit some comments for your consideration. I want to commend you for dedication to this project and your patience and perseverance in your ongoing efforts to improve the Administration of Justice in our country.

Although I suspect you have heard about every viewpoint imaginable during your hearings. You clearly have important work ahead of you, and I wish you the best in your endeavor. The events of the past several weeks have sharpened the focus of many police administrators in the country that a different path is required in the future.

As introduction, I am in my 47rd year of work in the Criminal Justice System, mostly as a sworn law enforcement officer and the last 29 as a Police Administrator. I have the usual degrees, advanced schools for my position, and belong to all the major professional organizations, but still struggle with the basic question, "Why is American law enforcement still struggling with a level of dissatisfaction raised again and again by residents within our communities?"   I have seen the level of conflict currently going on within our country on many other occasions in my career. It seems that at some point, we will need to rethink some issues and concepts or we are doomed to fail once again. I would respectfully ask that the task force consider the following.

1. Abandon the term "Community Oriented Policing" as a political talking point suggesting it is a viable solution to the problems we face in our profession. The definition of Community Oriented Policing has become varied and distorted by special interests. Elected officials who do not understand its concepts have diluted its meaning. Effective Community Oriented Policing is nothing more than Community Oriented Government; and needs to be re-framed with this reality.

The very definition of Community Oriented Policing reflects that it must be all of the Government agencies at the table to be effective in solving a communities issues and maintaining safety. I have subscribed to the concepts of Michigan State University Professor Robert Trojanowicz, the father of Community Oriented Policing, since the early 1980's. At its root, it is still very viable as a policing strategy, but it has lost its way. All viable and lasting solutions to a crime or societal problem involves more than just the police community. Even the simplest of neighborhood crime or disorder issues will likely involve other areas of local or county government to resolve. We must stop putting the solution to these issues at the feet of the police. The progression from Community Oriented Policing to Problem Oriented Policing, and then Intelligent Policing is nothing more than repackaging the truth that many partners are needed using a common problem solving model to be effective. Every government worker or elected official needs to engage together for this to be successful.

There always seems an interest in changing policing when other institutions in government have stayed stagnant. Some court systems have instituted Veteran or Drug Courts to a great deal of success; however, most criminal justice issues after the arrest by police have stayed the same. Persons with money get numerous opportunities that persons without money simply cannot access. More and more we see the tension between prosecutors and police increasing when there should be less conflict and more collaboration to make our communities safe.

Police agencies have significantly changed while other services provided from the City Halls in our country have remained unchanged. Many times these changed police agencies have resulted in increased friction between different government functions.

2. Support the overhaul of training for police officers from top to bottom. In many states, anyone can put himself or herself through the police academy and eventually become a police officer in hundreds of departments within our country. In Ohio, only a handful of the larger and mostly urban cities maintain their own academy. Many academies do not teach the subtleties of implicit bias, racial diversity, human interaction skills, interpersonal communication and body language. These lessons become the core skills used on a daily basis.

Some agencies have moved to a second abbreviated academy experience after 2 years on the job to teach these skills. I would suggest that this is an excellent idea and should be a requirement to continue your certification as a police officer in this country. Young officers mature with increased life experiences. They need further formal training during their entire career. This allows them to reach their full potential as guardians of their communities.

Once academy training is complete, quality training is financially beyond the means of many communities. Training is reactive and not proactive. An incident occurs somewhere and the training follows. This is backwards.

One specific training program I would like to denote is the FBINAA Officer Resilience Model. Based on the Air Force Model of mission ready, this training is as much a training philosophy as a training program. This philosophy provides a balance of training opportunities as an officer develops in their career to ensure they are mentally, physically, socially, and spiritually ready.

    a. Mental Fitness – The ability to effectively cope with unique mental stressors and challenges. RESULT: Police Officers have confidence in their tactics of safety, distancing, cover, and time to ensure they are responding appropriately to every situation and that are not driven by adrenalin.

    b. Physically ready – The ability to adopt and sustain healthy behaviors needed to enhance health and wellbeing. RESULT: Police Officers have confidence in their physical ability to meet any challenge and do not need to operate from a position of fear in their interactions with others.

    c. Socially ready – The ability to engage in healthy social networks and promote overall wellbeing and optimal performance. RESULT: Police Officers have confidence that interactions with everyone from the CEO of a fortune 100 company to the elderly, homeless, drug addicted, and disenfranchised will be positive and guardian in nature.

    d. Spiritually ready – The ability to strengthen a set of beliefs, principles, or values that sustain an individual's sense of well-being and purpose. RESULT: Police Officers have confidence that they are operating from a core set of principled values of character that drive their decisions. These decisions are because hearts are in the right place at all times.

3. Support that the police use of force as retribution becomes a crime and not merely a violation of a department policy. The Cleveland DOJ report from several years ago highlighted the number of times force occurs because the person was an "uncooperative jerk" where no verifiable threat occurred. The time is long past to reinforce this as criminally wrong behavior. Many police officers feel a bully cop bent on teaching a person a lesson motivated the force used recently against Mr. Floyd in Minn. MN. This is wrong and should be criminalized everywhere.

4. Police administrators in the country need the ability to seek that a police officer be decertified. This is not universally done; and is even strongly resisted in the State of Ohio. Unfortunately, I have had to discharge dozens of police officers in my career. I have no problem that these discharged officers were able to take advantage of a binding arbitration process where I was required to prove my case; however, many of these same officers find themselves in smaller, rural or suburban police agencies that perform no background investigation prior to being hired.

   A day must come where a Police Chief and a Union President are able to stand side by side in agreement that a certain officers should not continue to represent a community because he violated the trust in his oath of office.

5. Professional policy systems must be instituted in all police agencies of our country. My agency uses the Lexipol system that ensures our agency policies reflect the best practices in our country. It is shocking to me that an agency in 2020 still allows carotid restraints and has officers not sensitive to the issue of positional asphyxiation.

6. Finally, and probably the most controversial observation I would offer is a suggestion to support and recognize that many small and ill-equipped police agencies need to have a viable alternative to having their own police agency. The potential liability exposure of a police officer taking enforcement action is the same whether that is a one-man police agency responding to an incident or an officer in a large metropolitan area. Unfortunately, the infrastructure costs to maintain a well trained and capable police officer is often beyond the means of a small village or township. A broad and wide brush paints the police profession. We are all required to live with court decisions, and laws that arise out of what many times are poor policing practices by untrained and unqualified officers. It was a giant wake up call to many of the police professionals of our country when a small suburban department like Ferguson changed the national debate for years to come.

Sincerely

Jeffrey Paul Kruithoff, C.L.E.E.
Chief of Police, City of Springboro Ohio
Chairperson, Warren County Chiefs of Police
Commissioner – Ohio Organized Crime Commission

<u>Questions for witnesses</u>

For Professor Engel:

1) In some of your other writings you talk about the differences between problem-oriented policing and evidence-based policing. How are they different.
2) As a follow up question, talk about how a policing strategy might be effective, but not equitable. Can you describe that for me?
3) You also talk about the three "Ts" – Transparency, Teamwork, and Testing. With all the talk about transparency, how do you define it? In other words, where is law enforcement dropping the ball on transparency?

For Chief Kruithoff:

1) In your written submission you mention increased tensions between police and prosecutors, can you describe in more detail what you're talking about?
2) You also mention in your testimony that certain actions by police officers should be considered a crime and not just a violation of department policies… what do you think about formulating something like a Uniform Code of Policing Justice, akin to the UCMJ?