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EXECUTIVE SUMMARY

The Genesis and Mission of the Ad Hoc Committee

On Saturday, March 7, 2015, Madison, Wisconsin, woke up to a now-too-familiar news story in the United States about an unarmed Black male, who had been shot and killed by a white police officer. The death of Tony Robinson on March 6th at the hands of a 12-year veteran of the Madison Police Department (MPD) took place a little over half a year after the killing of Michael Brown in Ferguson, Missouri, an event that had pushed police treatment of Black Americans across the nation to front-page news.

The response to Robinson's death locally was widespread sadness, as well as concern and outrage. Thousands marched in support of Madison's Black community and in protest against the shooting. Many, including high school and university students, demanded immediate solutions in Madison to the issue of racially mediated police violence against Blacks.

On the heels of Robinson's death, the City of Madison's Common Council (**WAS IT UNANIMOUS?**) passed a resolution on May 21, 2015 to create the Madison Police Department Policy & Procedure Review Ad Hoc Committee, a diverse citizen body, consisting of 15 members, whose charge these past three years has been to conduct a "comprehensive review of [the] Madison Police Department's culture, training, policies and procedures." This review has been regarded as critical to understanding the current strengths of the MPD as well as identifying areas for improvement, particularly in the troubled realms of "racial disparity, implicit bias, use of force, [and] dealing with people with mental health problems or who are under the influence of alcohol or other drugs." The Council also charged the Ad Hoc Committee with exploring MPD policies and practices with respect to "the rights of civilian witnesses, disproportionate contact with youth of color, culturally-related behavioral variations, and other areas."

The racially-mediated divide to which Robinson's death drew attention is long-standing in our City, with its complex history of progressivism and segregation, but has been unacknowledged until recently. The *Race to Equity Report*, released by the Wisconsin Council on Children and Families in 2013, had rocked Madison and Dane County citizens of from complacency that year by its finding of the "sheer magnitude of the [racial] disparities...in many of the most fundamental status indicators" in our 94-percent-white county. Among other disparities, the report documented a 10:1 Black:White arrest ratio, which contributes to Dane County's incarcerated population being about 50 percent Black. In addition to having one of the highest arrest and incarceration rates in the country, Dane County is also home to large racially-mediated inequities in educational outcomes and attainment, unemployment, and poverty.

The *Race to Equity* report called much-needed attention to our tale of two different cities. It fell to the Ad Hoc Committee to take up the exploration of racial disparities as they affect and are affected by the MPD. The original call to 9-1-1 on March 6, 2015, came from Robinson's friends and was a call to help him; Tony was going through a drug-induced mental health crisis. His friends trusted that the Police were there to help.

A similar story unfolded two years and four months earlier in the case of an unarmed white man on November 9, 2012, in Madison. Paul Heenan, who had recently moved back to Madison, returned home intoxicated one night and mistakenly entered a neighbor's house. The neighbor tried to assist him, but Heenan resisted, and the two fought. After the MPD arrived on the scene, Heenan and the officer struggled, and the officer shot Heenan dead.

Paul Heenan's death helped spark legislation to require outside police agencies to investigate police shootings in Wisconsin, drawing public attention to instances of excessive use of force and leading to much scrutiny. Tony Robinson's death turned that attention to minority communities and those communities' relationships with the police. Both of these deaths informed the work of this Committee, which held its first meeting on December 8, 2015. During the past three and a half years, we have undertaken to analyze the City of Madison's Police Department's procedures and policies and to find ways in which the Department can improve.

The members of the committee represent the many faces of Madison, racially, ethnically, and economically, through the work we perform as part of our larger community, and through our past interactions with the Police. This diversity is deliberate; we bring with us an understanding of the broad differences within Madison as a whole and the ways in which these differences affect how the MPD interacts with and serves different segments of our population.

We commend our City's alders for taking action to address the ways in which the MPD's policies and procedures can and must be changed to resolve excessive or selective use of force and racially-mediated arrest disparities and promote transparency and trust in the work of the Department. **??? WHAT ARE ONE OR TWO MORE OF THE MOST IMPORTANT AREAS OF FOCUS OF THE COMMITTEE'S WORK.** We also commend the Council Executive Committee's President's Work Group for the work they have done to provide a forum for discussion of policing and community goals, priorities, and interactions and for exploring policing models in use in other communities, and the Community Response Team for its recommendations in addition to those formulated by the OIR team. Finally we commend the MPD and the City Attorney's Office for working with us to come up with an action plan for change that we believe will improve on what is already good about the MPD and reform what is not as good. Of course, we thank all of the committed citizen members of the Ad Hoc Committee, who met sometimes twice a month for the past three years.

The recommendations we put forward in this summary report are not intended to fix things once and for all. The City can and must do much more to address racial disparities within our criminal justice and education systems, housing, workplaces, and other realms of social life. We believe our City government must invest in measures to address the many issues that wind up confronting the police regularly because of a lack of resources locally for mental health treatment and equal economic and educational opportunity for all residents. By investing in root-cause solutions, we mitigate the need for a police response because other systems have failed. To use an analogy, ERs treat health crises, but a robust health care system and a healthy living environment promote health within a community, driving down ER visits.

This report thus cannot contain a complete solution for the issues that give rise within MPD to racial inequities in policing. Our recommendations are, however, a guide for beginning to create a better, ever-more-forward-looking MPD, one that is responsive to the many smaller communities that make up Madison, including those that have been marginalized by the inequities on which our society is built.

We hope that Madison will use our recommendations as a way of turning the hurt, angry, intense, and thoughtful conversations and testimony of these past few years into action and progress toward valuing all its resident equally and thereby healing our ugly, racially-mediated wound. We present to you a work-in-progress with the heartfelt request that you listen and reflect and keep the conversation ongoing.

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Letter from the Ad Hoc Committee Co-Chairs

We are pleased on behalf of the Madison Police Department Policy & Procedure Review Ad Hoc Committee to submit this report, which summarizes the Committee's recommendations for making our strong police department even stronger. This report is the culmination of the dedicated work by the 13 (initially 15) Committee members representing the City of Madison and City Attorney's Office staff, representatives of the Madison Police Department (MPD), and citizens, who collectively met monthly, then biweekly, and ultimately weekly over more than three years to complete a comprehensive review of the MPD's policies and procedures.

At the outset, we want to express our gratitude to the MPD, both for its historical and ongoing record of progressive policing, and for the open and accommodating manner in which its members responded to the Committee's inquiries and proceedings. The Department's willingness to engage in a process of self-reflection and to address the question "Are we who we say we are?" with respect to every aspect of its work is vital to the success of this whole undertaking.

Madison is fortunate to have such a strong police department, and while we are making recommendations for changes (or in many instances for the continuation or extension of current policies), this Report and the Committee's work should not be interpreted as an indictment of the MPD. Rather, it reflects the recognition that what is good about the Department can be made better, and acknowledges that, in a free and democratic society, citizen engagement with and oversight of policing is essential. This type of involvement is critical in our City during a time when divisions and distrust have emerged between the police and some of Madison's communities, especially minority and low-income communities. It is foundational to building a more cohesive relationship and rapport between all communities and the MPD moving forward.

The Ad Hoc Committee's process has been long and not without expense. This Report builds on the thorough and thoughtful OIR Group report, submitted to the Committee in December 2017, which thoughtfully reviewed the policies, procedures, and practices of the MPD, and provided the Committee with 146 specific recommendations for change. The Committee painstakingly evaluated each one of the OIR's recommendations, alongside additional issues raised by the President's Working Group in response to the MPD's reactions to the OIR recommendations, the Madison Police Professional Officers' Association (MPPOA), and the City Attorney's Office. We also listened to and incorporated community input and presentations from relevant organizations, **local (and national?)**, and experts. Our final Report adds to the OIR and President's Work Group recommendations, providing a total of **146** specific recommendations, which we now pass on to the Common Council and the Mayor for consideration and, we hope, approval and **action**.

We believe our report has been well worth the time, hours, and expense that have gone into producing it. We want to point to the fact, the very process of commissioning the OIR Report and considering its recommendations has already led to improvements; the MPD, to its credit, has responded with whole-hearted agreement to many of the OIR Report's recommendations and has already taken steps to adopt many of the recommendations to improve the policies, practices, and procedures of the MPD, over the past year or more.

We want to extend a special note of gratitude to Luis Yudice and Christian Albourn, who preceded us as co-chairs of this Committee. We are honored to have followed them in this role. Luis and Christian did yeoman's work leading this Committee through its first two years. When they both stepped down at the end of December 2017, they continued to participate as Committee members. We also are grateful to the entire Madison community for having entrusted us and Committee members with our important task.

Keith Findley & Tom Brown
MONTH 2019

Resolution Creating the Ad Hoc Committee

Declaring the City of Madison's intention to review policies, procedures, culture and training of the Madison Police Department by hiring an expert(s) in community policing, law, problem-oriented policing, racial disparities, restorative justice and implicit bias and the creation of an ad hoc committee and amending the 2015 budget to appropriate up to \$50,000 from the City's contingent reserve.

WHEREAS, the City of Madison is committed to be an exemplary participant in the national and local dialogue on the role of law enforcement in the community; and,

WHEREAS, the City of Madison understands a community should participate in defining how it wants to be policed and the community then has an obligation to review culture, practices, and procedures and then has an obligation to support the police department in fulfilling its responsibility; and,

WHEREAS, the City of Madison is committed to involving the community in advising and making recommendations to the Mayor, the Common Council, the Police and Fire Commission and the Madison Police Chief on matters of setting policies and procedures that reflect our City's longstanding tradition of community policing; and,

WHEREAS, the City of Madison is committed to transparency of policies, procedures, culture and training within the Madison Police Department; and,

WHEREAS, a comprehensive review of Madison Police Department's culture, training, policies and procedures, is critical to understanding the current status of our police department and identifying if there are areas for improvement, particularly in the areas of racial disparity, implicit bias, of use of force, dealing with people with mental health problems or who are under the influence of alcohol or other drugs, the rights of civilian witnesses, disproportionate contact with youth of color, culturally-related behavioral variations, and other areas,

NOW, THEREFORE, BE IT RESOLVED that the City will allocate up to \$50,000 from the Contingent Reserve in the 2015 Budget to hire an expert(s) in community policing, law, problem oriented policing, racial disparities, restorative justice and implicit bias to thoroughly review the Madison Police Department policies, procedures, culture and training; and,

BE IT FURTHER RESOLVED that the City may create an ad hoc committee to

- Complete a thorough review of the Madison Police Department's policies, procedures, culture and training using the report, other resources and testimony and,
- The ad hoc committee will work with staff to establish criteria, issue an RFP, review applications and make recommendations to the Common Council. The contract with the recommended expert(s) will be subject to approval by the Common Council.
- Make final recommendations to the Mayor, the Common Council, Police and Fire Commission and the Madison Police Chief, by July 2016 with interim recommendations when deemed necessary; and,

BE IT FINALLY RESOLVED that the ad hoc committee members will be a diverse body composed of City of Madison residents appointed by the Mayor, including the appointments of two co-chairs, and will include but not be limited to representatives of the African American, Asian, Latino, Native American and LGBTQ communities as well as a diversity of ages, socioeconomic status, and work experiences and organizations in the fields of mental health, youth advocacy and AODA. The appointments by the Mayor to the ad hoc committee will be submitted to the Common Council for approval. Upon completion of this work and the Common Council receiving the recommendations of the ad hoc committee the committee will be dissolved.

The Ad Hoc Committee Process and Activities

The Ad Hoc Committee met for the first time in December 2015. The original 15 civilian members, who were appointed by Mayor Paul Soglin, included representatives from throughout the Madison community with a diversity of perspectives. The chairs of the Committee from its inception to in December 2016 to December 2017 were Luis Yudice and Christian Albouras. They were followed by Keith Findley and Tom Brown, who remained co-chairs through the completion of this report.

For the first half year of its work, the Ad Hoc Committee met monthly and heard presentations relating to policing from inside and outside of the Madison Police Department and defined the scope of a formal study to be completed of the Madison Police Department's policies and practices. In late summer 2016, after a competitive process, the Committee selected that the OIR Group of California, a firm that specializes in the outside review of police practices, to complete a comprehensive review of the MPD.

The OIR Group began its work in November 2016 and completed its report in December 2017. During the course of its work, it met with MPD personnel, public officials connected to City and County government, community activists and leaders, and individual Madison residents. It also reviewed thousands of pages pertaining to MPD operations, including policy manuals, training curricula, sample investigations from MPD's Department of Internal Affairs, case files from officer-involved shootings, documentation of uses of force by officers, and transcripts from civil court hearings. The final OIR report included: an evaluation of MPD's strengths and opportunities for growth and a blueprint for enhancing MPD's commitments to best practices and progressive, responsive law enforcement in the form of 146 recommendations for change.

During this same time, the President's Work Group of the Madison Common Council (formed in 2016) met to "provide a forum for residents, to share information on Madison policies and procedures, to explore police policies and procedures from other communities, and to make short-term policy recommendations while waiting for the results of the MPD Policy and Procedure Review Ad Hoc Committee. Its assignment was to:

- Provide a forum for residents and members of the Common Council to discuss police and community goals, priorities and interactions. Build a deeper understanding of policing for elected officials and members of the public; and,
- Explore models and options from other communities related to policing and other police policies; and,
- Provide a forum for information sharing regarding police training, policies, data and trends including detailed presentations from the Madison Police Department (MPD) related to policing; and,
- Make recommendations to the Common Council on short-term policy, procedure and training while waiting for the results of the Ad Hoc Review of Police Policies and Procedures.

Beginning its work in September 2016, the President's Work Group reviewed a wide range of subjects relating to community and police relations. Following the direction of the Work Group, the Common Council directed the Ad Hoc Committee to:

- 1) Investigate additional supports for MPD officers interacting with EDPs, including types of training and ongoing training strategies to improve interactions (including a detailed analysis of ProTraining, an evidence-based practice proven to reduce overall use of physical force and the use of weapon force in police calls and hiring social workers to work with officers;
- 2) Evaluate precautionary principles with respect to working with EDPs, supports for officers dealing with EDPs, the duty to intercede and deescalate with regard to use of force, and the duty to preserve life to determine whether and how they may be addressed in MPD policies, practices and procedures.
- 3) Provide a review of the feasibility of external oversight of MPD internal investigations;
- 4) Further explore the IA Pro capabilities for early warning and intervention and speak with the University of Chicago Data Science for Social Good statisticians about collaborating to develop a predictive early warning

- system to support internal investigations and personnel management; and
- 5) Provide an implementation plan for a root cause analysis process at MPD for examining critical incidents and broader trends to better understand them and avoid adverse outcomes in future.
(President's Work Group Items 2, 5, 10, 11, and 12)

In January 2018, the City Attorney, Madison Police Department, and the Madison Professional Police Officers' Association (MPPOA) prepared their own responses to the OIR Report, including comments on each of its recommendations and a motion to accept, reject, or modify each proposed change. In March 2018, the OIR Group delivered its "Supplement to the Final Report." Beginning in March 2018, the Ad Hoc Committee began meeting HOW OFTEN to consider each of the OIR recommendations of the OIR Report in turn along with the responses delivered by the City Attorney, MPD, and MPOAA. In MONTH it increased the frequency of its meeting to every two weeks in order to facilitate completion of its mammoth undertaking.

The process that the Committee followed in considering each of the OIR Report's 146 recommendations was to consider it in light of the objectives of: 1) achieving maximum transparency, accountability, and racial neutrality on the part of Madison Police; 2) implementing best practices in policing; and 3) minimizing use of force in general.

After educating itself through extensive reading and testimony by relevant experts on each of the topics before it for consideration, and weighing input from MPD, MPPOA, and the City Attorney's Office, members engaged in discussion and agreed by consensus to either adopt each OIR item as suggested or with revisions. In some cases, these revisions preserved the OIR consultants' intent, while clarifying and/or accommodating input from the MPD, MPPOA, or the City Attorney's Office with regard to existing MPD practices or constraints. In other cases, the Ad Hoc Committee chose to take a recommendation in a new direction and/or to insist on the recommendation over the objections of the MPD, MPPOA, or City Attorney's Office. CAN WE GENERALIZE POINTS OF OBJECTION?

The Committee also reviewed the recommendations of the President's Work Group and those of the Community Response Team. What follows is a summarized presentation of the Ad Hoc Committee recommendations for change within MPD's policies and procedures. We have arranged these HOW for ease of use, review, and reference. Also included in these recommendations are suggestions adopted from the President's Work Group and from the Citizen's Response Team.

Summary of the OIR Report Recommendations

“While the Report acknowledges that the Madison Police Department functions well in many ways and has received special recognition for its gender diversity and mental health training, it found room for improvement over a variety of subject areas. Key recommendations include:

- The appointment of an independent auditor to provide continual oversight over the Police Department.
- Having the Police Department collect additional data of police activity to learn the degree that its police practice community policing.
- Instilling a formal evaluation process for all Police Department employees, including the Chief of Police.
- Developing a body camera policy with input from the community prior to committing to purchasing body cameras.
- Installing a more robust administrative investigation and review of officer-involved shootings.
- Convening town halls and listening sessions after officer-involved shootings and other controversial police-related events.
- Evaluating its demographic data regarding force, arrests, and citations to examine trends regarding racial disparities.”

Ad Hoc Committee Recommendations

Intro paragraph to be inserted following approval of categories for recommendations. This intro will explain the categorization of the recommendations and the fact that these go beyond the OIR Report to include the CR T recommendations—not yet included in this draft—and the specific recommendations that arose from the President’s Work Group assignment to the Ad Hoc Committee. Ignore any out-of-order numbering for the time being.

Civilian Oversight/Independent Monitor’s Office

“Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.”

Recommendation 2.8 President’s Task Force on 21st Century Policing – 2015

In its final recommendation, Recommendation #146, on page 245 of its report, the OIR Group recommended: “Madison should enhance its civilian oversight by establishing an independent police auditor’s office reporting to a civilian police review body.” The MPD did not oppose this recommendation, and the Madison Ad Hoc Committee wholeheartedly agrees with it. Indeed, the Committee believes that creating an independent monitor and civilian review body is so critical, both in its own right and to ensure successful implementation of all of the other recommendations the Committee is making, that we have moved this up as our first recommendation, and we are simultaneously presenting it separately to the Common Council and Mayor prior to completion of the full report so that the City can consider including it in the upcoming budget.

The Ad Hoc Committee believes that civilian oversight is critical to ensuring the vigilance and attentiveness necessary to ensure that the MPD is the progressive department that it says it is, and moreover, that it is making continuous progress toward achieving: 1) its own ideals and the expectations of itself and the requirements its own rules and procedures impose; 2) the requirements imposed on it by the Common Council and Mayor, pursuant to this report; and 3) the mandates emanating from the President’s Work Group, as well as other initiatives-to-come.

MPD has, admirably, responded to the OIR Report by agreeing to make changes in accordance with many, but notably not all, of the OIR Group’s recommendations, including a number that the Ad Hoc Committee strongly endorses. There is no doubt that community policing is a cornerstone of the Department’s philosophy, but as the OIR Group noted, there is what may be described as a tension between the MPD’s long history of endorsing and espousing progressive policing ideals and some of its less-than-community-oriented policies and practices. A recurring theme the OIR Group encountered—both from those within the MPD and from Madison citizens—is the question: Is the MPD really what it once was and what it says it is? Does it uphold its own ideals and best practices?

We thus recommend the creation of an independent monitor overseen by a Civilian Review Board as our first recommendation. Our reasons for this are three:

- We have observed that some of Madison’s many diverse communities perceive Madison’s police department as insular and unresponsive to their needs, and, therefore, fail to invest their trust in its officers.
 - Formalized civilian oversight is the most direct way the City can confront this challenge, ensure that the MPD is responsive to the needs and concerns of all segments of the community, and thereby build trust.

- It is our belief that, in a free and democratic society, the policing function must be controlled directly by the people themselves as much as possible.
 - To the extent that the community yields some of its freedoms to the authority of a police force in the interest of public safety and harmony, it must have tools to directly oversee the exercise of that police authority; the community must have a strong voice in deciding how it wants to be policed.
- We see almost all of our other recommendations as contingent or dependent on the establishment of a civilian police review body.
 - In order to keep the process and the promise of reform ongoing, it is essential that the MPD continue to receive input from those outside the Department, including the public it serves and to which it is ultimately responsible.

A variety of models exist for civilian oversight mechanisms. OIR Group recommended a monitor-type oversight mechanism and we concur. A monitor has the capacity to examine policies, patterns, and practices, and can be effective at promoting long-term systemic changes. The monitor's office must be strong and have full authority over and the cooperation of the MPD to permit it to engage in meaningful investigations and prescriptions. Importantly, the monitor must be sufficiently independent of the MPD to ensure that its office does not become subject to administrative "capture," as happens so often when agencies are monitored by people with whom they are too closely aligned. Civilian oversight mechanisms have been set up in many cities, but most lack key features required to be highly effective. There is a broad expert consensus on organizational elements that are crucial for success in civilian oversight agencies and we have incorporated these into our recommendation. These elements include full independence, adequate jurisdiction, adequate authority (including capacity to conduct independent investigations), unfettered access to records and personnel, full cooperation from police and other city partners, access to independent legal counsel, adequate resources, public reporting and transparency, and community outreach and involvement.

The composition of the civilian oversight board is crucial to its success. A civilian oversight board must truly represent the community in all its diversity, including differences along divides of race, ethnicity, gender, sexual orientation, geographic region within the City, socioeconomic status, and prior experience with the MPD, including those with lived experiences with arrest, criminal conviction, homelessness, substance abuse, and mental health problems. Though civilian oversight boards can provide accountability, relatively few existing boards are considered effective. As the Chicago Police Accountability Task Force report noted, "real and lasting change is possible only when the people most affected by policing have a voice." Reviews have found that in judging misconduct, civilian oversight boards are often even more deferential to officers than police internal affairs departments, and this appears to be a function of board composition. Civilians who volunteer to serve on oversight boards often have an affiliation with police. Moreover, research shows that education, income, and age are negatively related to reported experience with police mistreatment and positively predict favorability toward police, such that conventional criteria for appointment to city committees inherently create unrepresentative oversight boards. Meanwhile, civilian oversight boards with greater socioeconomic diversity, such as the Syracuse Citizen Review Board, appear to provide greater police accountability. The ACLU has recommended that a majority of board members should be nominated by a designated set of community-based organizations with appropriate characteristics, as implemented for example in Newark, NJ, and we strongly endorse this recommendation. The appointment criteria we specify should ensure a board with sufficient representation of communities most impacted, increasing the likelihood that the board would provide true accountability, and successfully build trust. It is also critical that the board be provided with access to extensive training, to help ensure sound decision making and credibility.

We recognize that this recommendation will require fiscal outlays. We firmly believe this oversight is well worth the cost, given that it is the most effective way we can see to build true trust in and accountability between the community and the MPD, and to ensure that our recommendations do not become just another report that

gathers dust on a shelf. We cannot estimate the total cost of creating a monitor's office at this time because we do not know yet how much the monitor and civilian board will be called upon to undertake investigations and other actions as a part of oversight. We suggest that, at a minimum, the City begin by hiring a highly qualified individual to serve as monitor and provide staff support, an office physically apart from the MPD, and operating expenses for the monitor. With time and experience, the monitor and the City can then gauge what is needed to fully implement the responsibilities of this new position and office.

We thus recommend that the Common Council adopt an ordinance to be signed by the Mayor stating that:

Recommendation #1:

The City should enhance its civilian oversight by establishing an independent police monitor's office staffed by an independent monitor and reporting to a civilian police review body. [OIR Report #146]

MPD notes that it does not oppose this recommendation and the City Attorney's Office notes that it may support it, pending additional information about how the auditor and auditor's office would function.

Ordinance to Create Independent Monitor and Civilian Oversight Board

The ordinance to create an independent monitor and civilian oversight board, which the Ad Hoc Committee advocates, includes the following elements:

I. Independent Monitor

A. Duties of the Independent Monitor:

1. Actively and on an ongoing basis monitor the MPD's compliance with its own SOPs, governing laws, and lawful orders from the Common Council, including compliance with or progress toward meeting any recommendations or directives emanating from the work of the Ad Hoc Committee to Review the MPD's Policies and Procedures and the OIR Report, to the extent they are adopted and approved by the Common Council, as well as the MPD's own stated goals and mission statement (that is, to ensure that the MPD is who it says it is).
2. Actively monitor MPD audits of Department programs and activities, police officer use-of-force incidents, and MPD investigations of personnel (referring cases back for additional investigation when necessary and recommending findings) and, in its discretion and within the Monitor's staffing and funding capabilities, undertake independent investigations of personnel, in response to external or internally generated complaints of misconduct; make recommendations to the Chief of Police regarding administrative action, including possible discipline, for such personnel; refer appropriate cases to the Police and Fire Commission for disciplinary action; and appoint counsel to provide representation to aggrieved individuals in presenting and litigating complaints against the MPD and its personnel with the PFC, to the extent the Monitor concludes that those complaints have arguable merit.
3. When a complaint is filed with the MPD against the Chief of Police or high-ranking MPD command staff, determine whether the complaint warrants appointment of an outside investigator to conduct an independent investigation, and if so, make that appointment.
4. Make recommendations regarding policy issues, and address any other issues of concern to the community, the members of the Civilian Oversight Board created pursuant to the Ad Hoc Committee's recommendations (described below), the Chief of Police, other MPD personnel, the Mayor or the Common Council.
5. Provide input to the Civilian Oversight Board for its annual review of the Chief of Police.
6. Monitor any other internal investigation of possible misconduct or undertake an independent investigation of possible misconduct by personnel when requested to do so by the Civilian Oversight Board, the Mayor, or the Common Council.
7. Provide a process for receiving and investigating complaints from community members about the Madison Police Department, the Chief of Police, or any personnel.
8. Submit an annual public report to the Mayor and Common Council by a date certain (e.g., March 15), setting forth the work of the Monitor's office during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of police department personnel, including, but without identifying specific persons, information regarding personnel who were the subject of multiple complaints, complainants who filed multiple complaints, and issues that were raised by multiple complaints; and making recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any, and changes to policies, rules, and training. Provide other pattern and practice analysis as needed. The annual public report shall also include assessment of the police department's progress in complying with its own SOPs, governing laws, and lawful orders from the Mayor or Common Council, including compliance with or progress toward meeting any recommendations or directives emanating from the work of the Ad Hoc Committee to Review the MPD's Policies and Procedures and the OIR Report, to the extent they are adopted and approved by the Common Council, as well as the MPD's own stated goals and mission statement (that is, to ensure that the MPD is who it says it is).

9. In addition to submitting the annual report, the Monitor's Office shall maintain an ongoing status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any.
 10. Engage in community outreach. This could include talking with the community about police policies, procedures or training, gathering input from a range of community members and groups, reaching out to special underserved/marginalized communities, and publicizing processes for handling complaints.
 11. Provide staffing for the Civilian Oversight Board.
- B. The Independent Monitor should be a person with extensive knowledge of civilian oversight of policing and "best practices" in policing, but who has never been employed by the MPD. It would be desirable that the person have sufficient background in civil rights and equity.
 - C. The Independent Monitor shall be independent of the MPD line of command, but shall be entitled to full cooperation from the MPD, including access to all records, policies, SOP's, data, and other information needed to perform the duties outlined here. To the extent permitted by law, the Monitor should also have subpoena power to compel testimony from witnesses and production of relevant documents.
 - D. The Monitor, its staff, the Board, and all consultants and experts hired by the monitor shall treat all documents and information regarding specific investigations or officers as confidential except to the extent needed to carry out their duties, including the transparency and reporting responsibilities of the Monitor's Office.
 - E. The Office of the Independent Monitor should have authority and funding to retain and use independent legal counsel.
 - F. The Independent Monitor should be provided adequate resources (funding and staffing) to be effective.

II. Civilian Oversight Board

- A. The work of the Independent Monitor shall be undertaken in consultation and collaboration with a Civilian Oversight Board, whose members shall be appointed by the Mayor and the Common Council in a manner that ensures diversity and inclusion of Madison's various communities, including but not limited to representatives of the African American, Asian, Latino, Native American and LGBTQ communities as well as a diversity of ages, socioeconomic status, work experiences, gender, geographic residence, and organizations in the fields of mental health, youth advocacy and AODA, and including individuals with arrest or conviction records. A majority of the members of the board shall be nominated by a designated set of community-based organizations that have an interest in civil rights, immigrant rights, disability rights/mental health, racial equity, and social justice, and that also have an interest in the safety of the city. Organizations with budgets under \$1 million shall be given priority in making these nominations. Additionally, 25-40% of the Board shall be composed of members with lived experience with homelessness, mental health, substance abuse and/or arrest or conviction records. The composition of the Board shall be run through the City's Racial Equity and Social Justice Initiative process to ensure equity and inclusion.
- B. The functions of the board should include the following:
 1. Provide input to the Mayor and Common Council to assist them in assessing the effectiveness of the Monitor's Office;
 2. With input from the Independent Monitor, conduct an annual review of the Chief of Police to assess her or his performance in office, and submit a report to the designated City Officials responsible for completing the annual performance review of the Chief as recommended by the Ad Hoc Committee, including recommendations as to whether the Chief has satisfactorily performed his or her duties or whether the Chief has failed to perform satisfactorily, thereby constituting "cause" for referral to the PFC with a recommendation for dismissal.
 3. Make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process;

4. Address any other issues of concern to the community, members of the board, the monitor, the Chief of Police, the Mayor, or the Common Council;
 5. Furnish an annual public report to the Mayor and Common Council regarding the board's assessment of the work of the monitor's office; the board's activities during the preceding year; concerns expressed by community members; the board's assessment of the police investigative and disciplinary processes; recommendations for ways that police department can improve its relationships with the community; and recommendations for changes to police department policies, rules, hiring, training, and the complaint process.
- C. In order to determine whether the Monitor's Office is effectively performing its duties and to make recommendations to the Chief of Police and Monitor's Office regarding investigations, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any, the Board should receive regular reports from the Monitor's office and should be allowed to review pertinent portions of the personnel files of personnel and PSIA files, including statements of personnel.
 - D. The members of the Board should engage in ongoing training to build expertise. The Board should have access to whatever training it needs, with sufficient funding provided.
 - E. The City should ensure socioeconomic standing is not a barrier to serving on the Board. This may be achieved by providing childcare, providing stipends, alternating meeting times, etc.

Root-Cause Analysis of Critical Incidents

Incidents involving serious use-of-force, especially those resulting in injury or death, are always undesirable. They are, however, at times unavoidable, and police cannot be blamed every time officers are truly required by circumstances to resort to force, even deadly force. Nonetheless, such incidents are always unwanted events that should be minimized as much as possible while permitting police to perform their important public safety duties.

Currently, MPD's institutional mechanisms for reviewing incidents involving use of force include internal and external investigations to determine if the officers involved complied with the law and MPD policies. These reviews are undertaken to determine whether the officer who used force should be held accountable for wrongdoing and whether disciplinary action or criminal prosecution should occur. These reviews are of course essential, and must continue, as we address in other recommendations the Ad Hoc Committee will include in its final report.

But to truly improve policing and work toward minimizing such undesirable incidents, more is needed. Beyond accountability for individual wrongdoing, systems must exist for fostering institutional learning from critical incidents. Processes must exist that involve non-blaming inquiries into the root causes of problematic incidents. Only through such a non-blaming, learning-focused process can the MPD fully explore ways to minimize use-of-force incidents as much as possible. The purpose of root cause analysis is not to assign blame but to enable complex organizations to identify opportunities for improvement.

Models for such learning-focused, non-blaming, root-cause analyses exist widely in medicine, industry, and other areas of government. Perhaps most notably, the National Traffic Safety Board (NTSB) offers an example of the potential for improving public safety in a highly complex system. Additionally, many hospitals have adopted processes for working with patients and families following unexpected or catastrophic patient outcomes, as part of what has become known as the creation of a "just culture" in medicine.

Best practices for root cause analysis require that such analysis be both "thorough and credible". For example criteria for a thorough root cause analysis would include the following elements 1) an analysis of the underlying symptoms; 2) determination of the factors and systems most directly related to the event under investigation; 3) identification of the risk points and their potential contributions to an event A root cause analysis process requires robust data analytics, which may be available through expansion of the IA Pro system or other data systems.

Creating such processes can be complicated, but fortunately, a grant from the U.S. Department of Justice will allow Madison to become a model site for technical assistance provided by the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School. The Quattrone Center is a nonpartisan, national research and policy hub, producing and disseminating research designed to prevent errors in the criminal justice system. In 2017, the Quattrone Center was awarded a federal Bureau of Justice Assistance grant to provide technical assistance to 20-25 demonstration sites around the country on sentinel events reviews. As explained in the federal grant RFP, this "is an effort led by the National Institute of Justice (the U.S. Department of Justice's research, development, and evaluation agency) to explore whether an all-stakeholder, forward-looking, non-blaming review of unanticipated events that signal an underlying system weakness in criminal justice can be used to understand areas of system risk and weaknesses, reduce the occurrence of these outcomes, increase safety, and augment the criminal justice system's ability to fulfill its mission." This includes offer-involved shootings.

The federal grant solicitation explains the role of the Quattrone Center as a technical assistance provider in this way:

The TA Provider will assist in the establishment and facilitation of these multi-stakeholder review panels, and provide ad hoc support for such processes as interviews of relevant parties and negotiation of information-sharing agreements. In addition, the provider will complete a process evaluation to identify promising practices and common challenges to implementation. The TA Provider will be instrumental in establishing and facilitating the reviews at the local level,

building on this work to identify promising practices and shared challenges across sites. This effort will build on several years of program development and inquiry at NIJ, including the completion of three pilot efforts in 2014.

THIS IS CLEAR. IS THERE ANYTHING MADISON MUST SUBMIT TO BECOME A SITE? A DEADLINE FOR SUBMITTING? THAT WOULD BE GOOD TO INCLUDE HERE. The Quattrone Center staff have explained the theoretical basis for their technical assistance in “just culture reviews” in this way:

Event reviews go by various names, but whether called root cause analyses or sentinel event reviews, their philosophy is the same: When a system generates undesirable events, all stakeholders should come together to review those events in a nonpunitive manner, understand the true underlying causes of *why* events unfolded as they did, and determine how they could have been avoided.

Such insights become the basis for recommendations for system change to prevent the next error. These investigations, epitomized in other industries through structures like the National Transportation Safety Board or hospital morbidity and mortality reviews, have fostered significant innovations such as child safety seats and surgical checklists that have saved thousands of lives.

...

The question asked in disciplinary hearings or litigation is whether the officer’s actions were legally justifiable or permissible under law enforcement policy. This retrospective approach does not reach the question of whether the incident could have been avoided, and how to prevent future incidents. Nor does it address the reality that most shootings, even when legally justified, decrease police legitimacy and fracture the relationship between officers and the communities they are supposed to serve.

Finally, the Quattrone Center explains its role as technical assistance provider in this way:

An independent facilitator would assemble a review team with subject matter experts, such as former detectives, psychologists or ballistics experts, and include community and police department representatives not directly involved in the incident. They would conduct interviews and review documentary evidence, working together to identify contributing factors and root causes of the event and developing policy recommendations aimed to prevent future, similar incidents. For example, an event review of a shooting of a mentally ill individual might result in recommendations to develop specific police protocols for interaction with people believed to be mentally ill, or create law enforcement response systems that include communication or collaboration with mental health professionals. Importantly, the event review would be firewalled from the disciplinary or legal process, to allow those who participate to do so candidly.

In analyzing police shootings, reviews can focus on the use of force and immediately preceding events. But they can also look at the incident response, and how later actions may have compounded the reaction to the initial event. ...

John Hollway, executive director of the Quattrone Center, visited Madison and expressed interest to the Ad Hoc Committee in working with the MPD and the City of Madison, provided several key stakeholders, including the MPD, City government, and perhaps community groups or other stakeholders commit to the process. We note that the MPD does not oppose this recommendation, and indeed, in its response to the OIR Report, wrote:

The Department has had some preliminary discussions with the Quattrone Center on this subject. The Quattrone Center, affiliated with the University of Pennsylvania Law School, focuses

on preventing errors in the criminal justice system. One aspect of their work involves root cause analysis (or “just culture” review) with agencies. In 2019, the Department will further explore the parameters of how a post-critical incident review process might look and whether it is feasible to work with The Quattrone Center moving forward.

The President’s Work Group report offers support for the MPD becoming a Quattrone Center demonstration site in its Action Item 12, which states: The Common Council directs the Ad Hoc Committee to provide an implementation plan for a root cause analysis process at MPD.

The Committee strongly recommends taking advantage of this opportunity by committing itself and the MPD, as soon as possible, to work with the Quattrone Center to establish Madison as a demonstration site for technical assistance under the federal Bureau of Justice Assistance grant for creating a root-cause analysis and “justice culture” process for learning from critical incidents. The Committee recommends that the Common Council direct City personnel to submit a request promptly for assistance from the Quattrone Center for this purpose.

Recommendation #2:

MPD should develop a robust review process to employ after a critical incident that, working with the Quattrone Center at the University of Pennsylvania Law School to develop a root cause analysis, examines the incident through the lenses of performance, training, supervision, equipment and accountability. The review process should consider pre-incident decision making and tactics, the use of force, and post-incident response, including the provision of medical care and communication with family members. The review process should include development of a corrective remedial plan designed to address any issues identified. [OIR Report #75]

Citizen Feedback/Involvement

All recommendations highlighted in pink are ones about which there is no disagreement. They are highlighted because for most of them there is no discussion included. There are still some recommendations whose approval/debated status is not indicated in the most recent table logging these. (Forgive the pink; when I chose it, I was using other, more ordinary colors to indicate other things and had no other choice.)

To facilitate the work of the Civilian Oversight Board, the Ad Hoc Committee recommends establishing practices for incorporating the Board's feedback and soliciting the ongoing input of citizens more broadly. It is the opinion of the Ad Hoc Committee that fulfillment of these practices is an important part of ongoing oversight and essential to MPD's incorporation of the rest of the Committee's recommendations.

Where MPD, MPPOA, or the City Attorney's Office has questioned or noted constraints on implementing a specific recommendation, we note this throughout this report in italics. Disagreement with a recommendation is noted in bolded italics. We note the original OIR Report number for each recommendation in brackets.

Recommendation #2:

MPD should closely consider and take into account the OIR Report's and the Ad Hoc Committee's recommendations while creating its new strategic plan in 201X. [OIR Report #1]

Discussion: MPD notes that this effort will require additional resources. We point out, however, that forward-thinking police agencies use formal strategic plans as a mechanism for planning and measuring their achievement of objectives. They set aside time and resources to reflect and map out a future for the organization. MPD has been operating without a strategic plan for a number of years. In 2017 MPD tentatively postponed its strategic planning process so it could digest and consider the findings and recommendations of the OIR and Ad Hoc Committee reports. To the degree that these recommendations identify issues that can help move the Department forward, we hope they will be incorporated in the new strategic plan. It is also critical that MPD seek input from other city stakeholders and the Madison community as the plan is developed to ensure that all Madisonians are able to readily contribute their perspective on what they hope the Madison Police Department will look like in future years to ensure that MPD belongs to all of its communities.

Recommendation #3:

MPD should implement 21st Century Policing recommendations to make all department policies available for public review. [OIR Report #10]

Discussion: MPD notes that it will review the few SOPs that are not already available and posted to determine if they should be posted, but has not yet made a commitment to post all. President Obama's Task Force on 21st Century Policing specifically recommends (1.3.1 TASK FORCE ACTION ITEM) that "to embrace a culture of transparency, law enforcement agencies should make all department policies available for public review." While most of MPD's policies are available to the public, some of the Department's tactical policies have been kept from public purview with the rationale that providing such information might compromise MPD's safety or tactical position with potentially dangerous individuals. However other agencies have regularly publicized such policies without cause for concern.

In order to better understand, receive ongoing feedback from, and build a working relationship built on trust with members of Madison's diverse communities, the Ad Hoc Committee further recommends that MPD:

Recommendation #4:

MPD should conduct town hall and listening sessions after all critical incidents so that it may listen to community concerns, respond empathically, explain process, and then debrief the public. (In the first few

days subsequent to an incident, MPD should be empathetic to any resulting death or serious injury, explain the investigative and review process, and listen to any expressions of upset or concern. After the conclusion of the investigation, MPD should provide a public debriefing of the incident, highlighting any performance issues that were identified for improvement and reform.) [OIR Report #13]

Discussion: The Ad Hoc Committee acknowledges MPD's constraints in releasing information gathered by an outside agency leading the criminal investigation and its adherence to State Law mandate to remain a spectator during the early stages of an investigation. However full recognition of these realities still allows town halls to be convened to:

- Show empathy to the injured or the decedent's family and friends and the residents of the neighborhood in which the incident occurred;
- Explain the investigative and review process; and
- Listen to any upset, frustration, or concern.

We do not believe that MPD's inability to release "facts" about an incident will create more community frustration or questions; this has not been the experience of other police agencies that regularly convene town halls in the wake of difficult circumstances or that of the Department of Justice's Community Relations Service in the wake of officer-involved shootings. We believe that creating an opportunity for communities to be heard provides a way for loss, frustration, and concern to be publicly aired, especially if MPD and other City officials are there to empathize and hear from them in a non-challenging forum.

Recommendation #5:

MPD should engage with the community about controversial events, including officer conduct that does not reflect core values or best performance. [OIR Report #14]

Recommendation #6:

MPD should find new ways to solicit and encourage feedback about performance from the community. [OIR Report #16]

Recommendation #7:

MPD should continue to expand Captains' Advisory Groups. [OIR Report #22]
Discussion: MPD notes that this will require additional resources.

Recommendation #8:

MPD should review the Special Community/Police Task Force Recommendations to integrate them into MPD culture and to embrace their spirit and underlying rationale. [OIR Report #27]

Recommendation #9:

MPD should engage community members at the interview stage of its promotional process. [OIR Report #114]

Discussion: Both MPD and the City Attorney's Office note that this change of process would be subject to bargaining since the current process does not involve a traditional interview. Thus while MPD supports this recommendation, it simultaneously sets out the structural barriers to prevent full implementation. The Ad Hoc Committee encourages MPD to reconfigure its protocols to create the opportunity for it to highly value community input as part of its process.

Recommendation #10:

MPD should routinely seek input from community stakeholders and professionals regarding performance of officers assigned to specialized units. [OIR Report #30]

Discussion: MPD notes that it regularly receives such feedback and that it would be hard to formalize the process. The recommendation intends that MPD formally and proactively "solicit" feedback regarding the performance of officers assigned to specialized units performing community policing functions. MPD's

major concerns include: 1) If an officer receives no feedback, MPD might evaluate adversely, and 2) Such an initiative would require contacting “thousands of people.” We do not foresee the likelihood of the first concern and disagree that such soliciting input would be onerous. For example, in the school context, such solicitation could be a simple email to the school community and juvenile justice agencies seeking input on the performance of the Educational Resource Officer at annual intervals: “How do you think our Education Resource Officer is doing? Are there suggestions you might have to improve our program?” We encourage the Department to focus on devising various practical and straightforward methodologies to accomplish feedback.

Recommendation #11:

MPD should seek input proactively from City stakeholders and the public before completing and implementing any new policies or changes to existing policies through the creation of a formalized, tiered process, ranging from working groups (for major changes) to notify them of interim implementation, with provision that minor or urgent rules can become effective during the notice period before final adoption. [OIR Report #88]

Discussion: MPD asserts that this recommendation, identical to the recommendation of President Obama’s Task Force on Twenty-first Century Policing, would be cumbersome and delay needed updates. To suggest that community input is too cumbersome runs contrary to the Task Force’s recognition that any community input should be solicited and valued by a police agency, especially with regard to the “rules” that govern its conduct. If time is of the essence, MPD could certainly deploy an interim policy (as it recently did with its back-up policy) and then seek input from the community. To suggest, as MPD does, that many policy changes do not directly affect the community shows a disregard, or at least an underestimation, of the potential value of community input and of the reality of each policy’s direct or indirect influence on the form of policing in Madison. The response also fails to recognize how “department philosophy” should incorporate “community philosophy” on how MPD should guide its officers. If an anticipated policy change does not affect the community, seemingly the community will not bother to weigh in. But our position is that it should have the opportunity, rather than being preempted by the Department’s approach to policy development. *We agree with MPD that local Captain’s Advisory Groups may be one mechanism for public input.*

Municipal Oversight

Comments indicate original wording of recs. I have edited the original in some cases for purposes of clarity and so that all recommendations are worded in a parallel manner, beginning with the body who is to implement them and with qualifying phrases/conditions at the end: MPD should...The City should... There was debate at one meeting about whether I should do this. You will be able to compare and decide on this.

Several of the Ad Hoc Committee's recommendations are directed to the City, having to do with oversight of the Chief of Police's job performance and tenure; disciplinary decisions; complaints against high-ranking command staff; and the purchase and use of all surveillance equipment.

Recommendation #13:

The City should consider whether to consult with its State Legislature representative to propose amending the PFC statute so that the Chief of Police serves a fixed term, subject to renewal by the PFC.

[OIR Report #142]

Recommendation #14: REPEATE ABOVE. WHERE DOES IT BELONG?

The City should institute protocols for a performance evaluation process that includes members of the community, prioritizing socio-economic diversity among those members, for the Chief of Police at fixed intervals, with the evaluation being a potential basis for a finding of 'cause' should the Chief's performance fall significantly below community expectations. This evaluation should not be conducted by the PFC. [OIR Report #141]

Discussion: Madison presents the unique situation where the tenure of its Chief is immune from a City Administrator, elected officials, the electorate itself, or any evaluation process. S/he has the possibility of life tenure provided the Chief does not commit a significant transgression. While there are benefits to insulating top law enforcement executives from unpredictable political pressure, this dynamic comes at a cost: namely, the perceived limited ability to replace a chief who has, for whatever reason, ceased to be effective or responsive to the community's needs. Moreover, there are no current assessment tools built into the process with which to consider how well the Chief is performing. The City Attorney suggests that there could never be a time when a Chief's performance in relation to community expectations could itself suffice to constitute "cause" for removal. However, extremely poor performance and unresponsiveness to the community at some point could and should constitute "cause."

We suggest balancing the competing interests of insulating the Chief from political whims and of having a Chief who continues to respond to the interests of the community by assigning the PFC the responsibility of evaluating the Chief at regular intervals. After a fixed period the PFC would solicit input from its community and then prepare a performance evaluation considering what the Chief indicated she or he intended to accomplish during the application interview, assessing the degree to which those objectives were achieved, identifying additional accomplishments and highlighting any performance concerns. As an alternative, the evaluation could be conducted by the Mayor.

Recommendation #15:

MPD and the independent auditor should continue to review the MPD disciplinary decisions on significant disciplinary action to determine to what degree the PFC post-disciplinary process is impacting those decisions.

[OIR Report #143]

Discussion: It will be noteworthy and important to gain the independent auditor's perspective

on this issue after his or her having had an opportunity to dig into individual cases to evaluate trends. The OIR Group and the Ad Hoc Committee believe (MPD disagrees) that the fact that few cases are brought to the PFC for review indicates a significant flaw in the disciplinary system. For example, when the PFC receives a complaint, it can only take action and rule on the allegations after conducting a full-fledged hearing. This requirement imposes a significant burden of time and attention on the aggrieved parties, and requires complainants either to have an attorney (at their own expense) or to take their chances navigating the administrative hearing process on their own. It is, therefore, no surprise that the PFC has heard very few community-based complaints in its history. On matters of suspension, the PFC's current hearing process also appears to have a chilling impact on the MPD discipline process. If the Chief notifies an officer of his intent to implement a suspension based on the Department's own investigation, the officer can request a full hearing before the PFC and the Chief as complainant must prove the case through presentation of evidence. This process may explain why no cases in which the MPD has imposed discipline have been heard before the PFC for at least six years. In fact in the only case of recent vintage where MPD has sought to bring charges to the PFC, involving an officer who had been involved in a controversial officer-involved shooting and whom the City had moved to terminate, the City instead "settled" the case. The matter the settlement terms ended up being the subject of significant concern and controversy. According to the OIR Group, MPD is unique in that "years have passed and no officer has challenged a disciplinary determination. It would be akin to a criminal justice system in which every defendant pleaded guilty. In policing it is difficult enough to remain firm in disciplining officers; if there is also strong reticence in participating in the post-disciplinary processes, the likely result is reduced accountability for officers."

Recommendation #16:

The Independent Monitor should review any complaint MPD receives against the Chief of Police or high-ranking MPD command staff and decide whether an outside investigator should be appointed and that input should be publicly available. WHICH IS IT? In the absence of an Independent Monitor, the decision will be based on an objective evaluation process like Just Culture to establish an internal decision tree process. If the PFC receives a complaint against the Chief of Police or high-ranking MPD command staff, it should consider retaining an outside investigator to conduct an independent investigation.

Discussion: MPD notes that any complaint it receives against an employee is always investigated by an employee of higher rank. The department has also elected, on occasion, to request that an outside agency perform an investigation or review of a complaint on a case-by-case basis, and this practice will continue.

Use of Force

The Ad Hoc Committee's overall goal with regard to review of policies involving use of force has been to balance the safety of the public and officers with that of a suspect to make sure that everyone involved in a tense situation walks away from it safe and sound. We focused our discussion on emphasizing the importance of reliance on non-violent tactics, including de-escalation, and the less-than-lethal tactics available to officers when engaging with a dangerous suspect.

The Ad Hoc Committee therefore began by making sure we understand the genesis of the Constitutional legal standard that governs police use of force in the U.S. We engaged in a process of robust and informed community engagement, discussions with experts, and readings to consider the potential risks and benefits to be gained by refining MPD's use of force guidelines and raising the base standard governing use of force in Madison. **Cite who Ad Hoc Committee heard from.**

Constitutional Standard

Currently, MPD follows the base constitutional or Fourth Amendment standard, which governs use of force. Fourth Amendment inquiry focuses on whether the seizure (in this case, the shooting) was objectively reasonable to someone standing in the officer's shoes and not on what the most prudent course of action may have been or whether there were other alternatives available. It does not require an officer to use the least-deadly or less-than-deadly force as long as it was reasonable for the officer to use deadly force.

MPD SOP takes as its starting point *Graham v. Connor*, 490 U.S. 386 (1989), which determined that an objective reasonableness standard applies in instances of officers' use of force in making an arrest, investigatory stop, or other "seizure" of a person. "Reasonableness" of a seizure "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake."

Summary and what MPD's policy looks like in practice here.

Our recommendations rely upon expert work already done in the field of policing; the guidelines established by President Obama's President's Work Group on 21st Century Policing; and a group of national experts on law enforcement and criminal justice, including Madison's former police chief, Noble Wray, and the Dane County United Way President's Work Group. The latter Work Group found that the principles of de-escalation and the duty to intercede are included in certain MPD policies, but are not incorporated into the MPD Use of Force and Use of Deadly Force standard operating procedures (SOPs).

Therefore, the Ad Hoc Committee recommends that MPD adopt precautionary use of force principle as part of its overarching guidelines, specifically adding language that reads:

De-escalation tactics and techniques are actions available to officers that seek to minimize the likelihood of the need to use force during an incident. Officers shall attempt to slow down or stabilize the situation so that more time, options, and resources are available for incident resolution.

The duty to intercede is the principle that officers have a duty to stop other officers who are using excessive force and report them to a supervisor.

Additionally, the President's Work Group found that MPD's Use of Deadly Force SOP recognizes "the dignity of all people and the value of human life" as important principles. Other cities have **policies** that utilize stronger language and state an officer's "duty to preserve life." For example, NYPD's policy includes the language: "The primary duty of all NYPD officers is to protect human life, including the lives of individuals being placed in police custody."

The Ad Hoc Committee further recommends including these definitions taken from a presentation by Representative Chris Taylor to the President's Work Group:

- **Necessity:** Deadly force should only be used as a last resort. The necessity to use deadly force arises when all other available means of preventing immediate and grave danger to officers or other persons have failed or would be likely to fail.
- **Proportionality:** When force is needed, the force used shall be in proportion to the threat posed.
- **Reassessment:** Officers shall reassess the situation after each discharge of their firearm.
- **Totality of officer conduct:** The reasonableness of an officer's use of force includes consideration of the officer's tactical conduct and decisions leading up to the use of force. Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to withdraw, take cover or reposition, rather than the immediate use of force.
- **Immediate threat:** Deadly force is only authorized if the threat is immediate. A threshold of "immediate threat" reflects language in United States Supreme Court decisions. The latest model use of force policy published by the International Association of Chiefs of Police eliminate the term "imminent."

Lastly the **Ad Hoc Committee recommends adopting the principle of proportional force**, explained as followings:

"Department members will use only the force that is proportional to the threat, actions, and level of resistance offered by a subject. Proportionality involves officers: (1) using only the level of force necessary to mitigate the threat and safely achieve lawful objectives; (2) considering, if appropriate, alternate force options that are less likely to result in injury but will allow officers to achieve lawful objectives; and (3) considering the appropriateness of officers' actions.

Proportional force does not require officers to use the same type or amount of force as the subject. The concept of proportionality does not mean that officers, at the moment they have determined that a particular use of force is necessary and appropriate to mitigate a threat, should stop and consider how their actions will be viewed by others. Rather, officers should begin considering what might be appropriate and proportional as they approach an incident, and they should keep this consideration in their minds as they are assessing the situation and deciding how to respond. Proportionality also considers the nature and severity of the underlying events."

In order to improve administrative, training, and review functions with respect to use of force, the Ad Hoc Committee makes the following recommendations.

Recommendation #17:

MPD should review and integrate DCI protocols regarding contact with family members after an officer-involved shooting into its own officer-involved critical incident protocols. [OIR Report #70]

Discussion: MPD's lack of established protocols to guide its personnel regarding contact with family members after officer-involved shootings has proved a problem in some situations. There have been delays in family members' access to critically injured individuals who have been transported to the hospital, for example. The District Attorney's Office has a Crime Response Program that has social workers available around the clock to help coordinate

outreach efforts for victims of crimes. While there is no MPD policy requiring notification following a critical incident, MPD historically and to its credit has involved the Crime Response Program in its initial response. The recently-developed DCI protocol includes notifying the DA's office.

Recommendation #18:

MPD should consider using the Rapid Response Team as a resource in the specific context of interacting with family members after an officer-involved shooting. [OIR Report #71]

Recommendation #19:

MPD should interview the on-scene emergency medical providers at officer-involved shootings??? as part of the administrative investigation, if the criminal investigation has not obtained a full account of their observations. [OIR Report #74]

Recommendation #20:

MPD should develop a robust review process to employ after a critical incident that, working with the Quattrone Center to develop a root cause analysis, examines the incident through the lenses of performance, training, supervision, equipment and accountability. The review process should consider pre-incident decision making and tactics, the use of force, and post-incident response, including the provision of medical care and communication with family members. The review process should include development of a corrective remedial plan designed to address any issues identified. [OIR Report #75]

Recommendation #21:

MPD should convene a meeting with the Department's attorneys for the purpose of holistic review of any incident for which there is a civil judgment or significant settlement to arrive at any insight learned from the litigation process itself, and to devise a public corrective action plan that addresses any policy, performance, training, supervision, investigative, and equipment issues identified during the course of the litigation. [OIR Report #76]

Discussion: The City Attorney's Office notes that, while its office and the MPD command staff already do this, a judgment does not mean there needs to be a corrective action plan and will not convene a public meeting to discuss the specifics of any case. We appreciate of MPD's support for this recommendation, but are disappointed by the City Attorney's response. Virtually all adverse judgments and significant settlements provide a forum for improving performance, training, guidance, and the handling of the litigation itself. Developing a remedial plan is not an admission of "fault or wrongdoing," but a sign that an organization can and wants to get better. In the same way that we urge MPD to be reflective and self-critical, we urge the Office of the City Attorney to adopt a similar posture, at least as to police-involved litigation.

Recommendation #22:

MPD should review whether additional SOP language or training is needed to clarify and require through policy and training that an officer who witnesses another officer use force is required to report it and document his or her observations in a supplemental report. [OIR Report #78]

Recommendation #23:

MPD should go beyond a determination of whether any use of force has met a Constitutional standard or was inconsistent with Department policy in evaluating force incidents to also identify any tactical or other performance issues, and determine whether additional remedial action—such as discipline, training, or debriefing—is appropriate. [OIR Report #81]

Recommendation #24:

MPD should convene a panel to roundtable selected force incidents to review the incident, to identify training, policy, supervision, and equipment issues, and to develop an appropriate after-action plan. [OIR Report #82]

MPD notes that this recommendation largely parallels Recommendation #23/OIR Report #81 above, “and while there may be benefits from this type of process, many of the same complications could arise from implementation.” The only complication raised is that timing is not feasible, while the City Attorney’s Office says “MPD’s PS&IA does this already.”

Recommendation #25:

MPD should identify and publicly commend officers who practice de-escalation techniques and problem-oriented policing. [OIR Report #83]

Recommendation #26:

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

Recommendation #27:

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

Recommendation #28:

MPD should consider when to begin employing documented accountability measures for officers and sergeants who fail to comply with the requirement for entering force incidents into the use of force database. [OIR Report #86]

Discussion: MPD notes that: The use-of-force coordinator is responsible for ensuring the use-of-force database is comprehensive. Officers are held accountable when they fail to make required entries.

Recommendation #29:

MPD should further break down published use-of-force data by district and shift to ensure that Department leaders are focused on where and when officers use force most frequently. [OIR Report #87]

Discussion: MPD notes that data collection by shift began in 2018.

Recommendation #30:

MPD should amend its Electronic Control Device Use SOP to limit ECD use to circumstances involving violent or assaultive subjects, or to prevent subjects from harming themselves or others. [OIR Report #91]

Discussion: The MPD policy limits ECD usage to overcome “violent or assaultive behavior or its threat,” a provision that is more progressive than many agency’s guidelines and is more in line with recent jurisprudence requiring a higher level of threat before an ECD is constitutionally permitted. However, the MPD policy goes on to authorize ECD use “if the officer reasonably believes that the subject poses an articulable threat of harm to an officer or to another person.” There is no further definition in the policy to what is meant by this language. This provision unfortunately swallows the first, more limiting, one, and could be used to justify taser deployment in many more circumstances than those involving a violent or assaultive subject.

Recommendation #31:

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

Discussion: MPD indicates that our recommendations to amend its SOP are fully addressed in training. While training is important, there needs to be clear guidance through policy so that all officers understand in writing what the expectations of the Department are when they engage in a foot pursuit.

Recommendation #32:

MOD should amend its use of deadly force policy to eliminate authorization for shooting to prevent escape, or in any situation that does not present an imminent threat of death or great bodily harm to identifiable officers or third parties. [OIR Report #98]

Discussion: MPD prefers language from the National Consensus Policy on Use of Force. Use of force may occur "...to prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving great bodily harm or death, and the officer reasonably believes that there is an imminent risk of great bodily harm or death to the officer or another if the subject is not immediately apprehended."

Recommendation #33:

MPD should commit to having the Use of Force Coordinator and executives assessing force regularly reevaluate the SOPs governing uses of force in light of the facts and circumstances of the incidents they review, making amendments as necessary. [OIR Report #100]

Recommendation #34:

MPD should clarify the officer-involved critical incident SOP to ensure that investigators obtain a statement from involved and witness officers prior to release from shift, absent extraordinary circumstances. One option for this statement is a self-administered interview. [OIR Report #68]

Discussion: Under current DCI guidelines, involved officers may be sent home for 24 to 72 hours after an officer-involved shooting incident—prior to being interviewed or giving a formal statement—"to allow the involved officer time to overcome the initial stress of the incident." Unlike the DCI protocols, there is no length of time specified.

By permitting this kind of delay, MPD contributes to community mistrust of officer-involved shooting investigations and is not consistent with best investigative practices by forfeiting the opportunity to obtain pure contemporaneous statements from the involved officers about what each did and why they did it. MPD should not follow this ill-conceived investigative protocol adopted by DCI, and should clarify its current policy to indicate that officers are to provide a statement to investigators prior to being released from duty.

Though we recognize that there are a number of affiliated police groups and police unions who endorse the waiting rule, those studies fail to adequately consider the potential for contamination of recall during the waiting period during a high-profile event such as an officer-involved shooting. Their position has not been endorsed by other professional policing groups such as the Police Executive Research Forum. In contrast, the arm of the United States Department of Justice that investigates "pattern and practice" Constitutional violations by police agencies has expressed concern about agencies who have endorsed a 48-hour waiting rule.

MPD does not address the fact that in the officer-involved shooting context, the officer has a high

likelihood of his or her memory being contaminated and impacted by exposure to outside stimuli. Police agencies who ensure that a “pure” statement of the officer is obtained the date of the incident prevent such contamination from occurring and that their investigation is free from that cloud. An investigative protocol that is effective at obtaining timely and pure evidence must take precedence over distorting best investigative practices in an effort to persuade officers to provide voluntary statements. Including a waiting period to accommodate officers’ interests and entice them to provide voluntary statements confuses investigative priorities.

MPD argues that the public safety statement inferring that the need to obtain additional information from the involved officer is lessened by this practice. As MPD knows, the public safety statement, which provides some initial information about the incident shortly after the shooting event, is not designed to obtain critical “state of mind” evidence from the officer, but simply to learn the basic information necessary to stabilize the incident. This sparse information is intentionally kept brief, and is not inherently insightful into why the officer decided to use deadly force. Moreover, those agencies have learned that if there remain additional questions for the involved officer as the evidence is further processed and analyzed, they can always conduct a supplemental interview of the officer.

Recommendation #35:

MPD should clarify the SOP on officer-involved deaths and other critical incidents to ensure that investigators obtain a statement from involved and witness officers prior to providing the officers the opportunity to review any recording of the incident. [OIR Report #69]

Discussion: MPD agrees with the recommendation, saying that MPD’s SOP adopted in 2017 provides that “officers involved in an OICI will be asked to provide an initial statement without viewing video, but have an opportunity to view video (if any exists) and then then interview will continue for additional discussion with the benefit of having viewed the video.” It also provides for “deviation at the discretion of the OICI command.” The City Attorney disagrees with the recommendation because MPD does not control the investigation.

Recommendation #36:

MPD should create procedural justice guidelines within the officer-involved critical incident SOP to ensure that officers respond with sensitivity to the emotional and safety needs of witnesses and family members, and that, when legally permissible, witnesses and family members are kept advised of the process and procedure related to the incident. [OIR Report #72]

Discussion: MPD notes that it is unaware of the need for this recommendation since it has received no concerns regarding how witnesses to an officer-involved shooting have been handled and that there is sufficient guidance to how to handle witnesses in its stop and frisk SOP. The OIR Group, however, did hear from community stakeholders about how some of the witnesses were treated in at least one recent officer-involved shooting. Moreover, we are aware of other jurisdictions in which agencies have compounded community tensions after officer-involved shootings by transporting witnesses to the station without clear guidance on whether the witnesses are “voluntarily” agreeing to participate. Some of this upset has even transferred to the civil liability arena, resulting in liability to the jurisdiction for providing insufficient guidance to handling detectives and officers. Even if Fourth Amendment guidance is provided to MPD generally in another section of the SOP, there is no downside to incorporating those principles in the specialized context of a critical incident investigation, and therefore reiterate our support for this change.

Recommendation #37:

MPD should conduct an administrative investigation of all officer-involved shootings and other critical incidents automatically, separate from any criminal investigation, including, at a minimum, re-interviewing involved and witness officers, if necessary. [OIR Report #73]

Discussion: MPD notes it is willing to re-interview witnesses only if the DCI criminal investigation does not fully address compliance with all relevant MPD SOPs. We appreciate MPD's receptivity to re-interviewing involved and witness officers relating to a critical incident if information about tactical decision making and other policy, training, or equipment issues that are not the focus of the criminal investigation. However, MPD still expresses reticence about devising a protocol where such an interview is undertaken in every case.

It is critical for an agency interested in learning and improving from a critical incident to value the collection of facts and insight, even regarding secondary concerns. In the hundreds of detective and administrative interviews we have reviewed, there has consistently been additional, relevant, and often critical information that emerges from the administrative interview. We again urge adoption of an SOP where an administrative interview of involved and witness officers is routine and automatic.

Recommendation #38:

MPD should amend force-reporting protocols for certain categories of force (at minimum those that are recordable incidents) to require supervisors to conduct a separate investigation meeting basic investigative standards sufficient for a thorough and complete review of the incident and the events leading up to it. [OIR Report #79]

Discussion: MPD notes that the **PS&IA unit** investigates citizen complaints and that some other use-of-force incidents may also be subject to internal investigation or administrative review. Every use-of-force incident is reviewed by the **use-of-force coordinator** and summarized for the chiefs on a regular basis. However, by relying so heavily on the complainant's initiative, MPD fails to recognize the internal value of conducting an investigation into the force incident. Moreover, there are many reasons why a person may or may not complain about the force; merely because no complaint is filed does not necessarily mean the force was appropriate or necessary. MPD does recognize that certain use-of-force incidents might benefit from additional front-end work by a patrol sergeant, but argues that requiring more full-fledged investigations or reviews of all use-of-force incidents would be a significant drain on limited supervisory resources. The department agrees to explore additional SOP language or training guidance to address this.

Recommendation #39:

MPD should adopt policy requiring a supervisor to evaluate whether each use of force was within policy and compliant with any other policies implicated, such as the foot pursuit or de-escalation policies, and provide a supporting analytical narrative that also demonstrates a holistic review of all the circumstances surrounding the use of force. [OIR Report #80]

Discussion: MPD notes that the use-of-force coordinator reviews every use-of-force incident and that requiring a narrative document reviewing each incident is not feasible, without additional staffing for this position. MPD lags uncharacteristically behind other departments in this regard. While MPD does indicate it is willing to "fine tune" this process, our position is that a more substantive change should be a priority.

Recommendation #40:

MPD should seek input from City stakeholders and the public proactively before completing and implementing any new policies or changes to its existing policies. MPD will do this by creating a formalized, tiered process, ranging from working groups for major changes, with minor or urgent rules becoming effective pending final adoption, during a notice period for interim implementation. [OIR Report #88]

Discussion: MPD asserts that this recommendation, identical to the recommendation of President Obama's Task Force on 21st Century Policing, would be cumbersome and delay needed updates. To suggest that community input is too cumbersome runs contrary to the Task Force's recognition that

community input should be solicited and valued by a police agency, especially with regard to the “rules” that govern its conduct. MPD notes that it provides opportunities for community input through its web site, process for receiving complaints, and occasional public fora. It recognizes the benefit of enhancing opportunities for input into significant SOP changes and will explore options for doing so, such as expanded District Advisory Groups (Recommendation #22). If time is of the essence, MPD could certainly deploy an interim policy (as it recently did with its backup policy) and then seek input from the community. To suggest, as MPD does, that many policy changes do not directly affect the community shows a disregard, or at least an underestimation, of the potential value of community input and of the reality of each policy’s direct or indirect influence on the form of policing in Madison. The response also fails to recognize how “department philosophy” should incorporate “community philosophy” on how MPD should guide its officers. If an anticipated policy change does not affect the community, seemingly the community will not bother to weigh in. But our position is that it should have the opportunity, rather than being preempted by the Department’s approach to policy development.

Recommendation #41:

MPD should publicize MPD’s commitment and willingness to go beyond *Graham v. Connor* standards as it further refines its policies relating to the use of force to officers and to the community. [OIR Report #90]

Discussion: In its thoughtful response, MPD recognizes that it can and does provide additional guidance to officers beyond *Graham*’s objective reasonableness test. That recognition is all that this recommendation is intended to do. The City Attorney’s response wrongly interprets the recommendation as suggesting that we are asking for abandonment of the *Graham* standard. The City Attorney’s response is also inconsistent with the position taken in MPD’s response and has caused confusion to the general public.

Recommendation #42:

MPD should modify ECD guidelines to prohibit ECD use on women obviously pregnant, elderly individuals, obvious juveniles, individuals on stairwells, rooftops, or other elevated positions, and bicyclists, outside of exigent circumstances. [OIR Report #92]

Discussion: The MPD response notes that this is a training issue and argues that a complete prohibition on ECD use in these situations would be unwise, preferring to leave officers some discretion to use the device in accordance with their training. The current ECD policy prohibits use of an ECD under four specific circumstances, absent exigent circumstances: (a) against handcuffed subjects; (b) against subjects fleeing on foot; (c) against subjects operating a motor vehicle; and (d) from a moving vehicle. At a minimum, MPD should add to this list of qualified prohibitions those categories included above. If MPD believes that there is a need to have an “exigent circumstance” exception to prohibited use (although it is hard to contemplate an exigent circumstance when ECD use would be appropriate in dealing with a person on a rooftop), it should define what circumstances would constitute an exigency. The IACP Model Policy cited by MPD in support of its position elsewhere, specifically instructs officers that ECDs should generally not be used in any situation where the officer has a reasonable belief that the subject might fall resulting in death or serious physical injury.

Recommendation #43:

MPD should modify ECD guidelines to require officers to re-assess the threat posed by an individual prior to any successive ECD application, as in the case of any repeated use of force. [OIR Report #93]

Discussion: MPD notes that this is a cornerstone of MPD’s use-of-force training, with application to any use-of-force tool or technique, and is addressed in the general language of MPD’s Use of Non-Deadly Force SOP (applicable to all force options)."

Recommendation #44:

MPD should modify guidelines to preclude officers from deploying more than three ECD applications on an individual or a single application lasting longer than five seconds, unless exigent circumstances are present where the higher use of force would be required to gain control of a subject. [OIR Report #94]

Discussion: MPD notes that this would be an unwise policy decision as ECD deployment may prevent a situation from escalating “even to a deadly force situation. An example would be a subject holding or attempting to access a weapon.” MPD’s response to both this recommendation and Recommendation #93 notes that these concerns are addressed in training, and argues against an absolute prohibition, leaving officers the discretion to decide whether and when to use an ECD in these situations. At a minimum, the issues of successive or prolonged ECD application and multiple simultaneous applications should be addressed in the ECD guidelines, even if MPD chooses not to adopt complete prohibitions.

Recommendation #45:

MPD should modify guidelines to preclude multiple officers from simultaneously deploying their ECDs on an individual unless exigent circumstances are present where the higher use of force would be required to gain control of a subject. [OIR Report #95]

Discussion: MPD notes that this would be an unwise policy decision as a particularly high-risk situation might call for multiple ECD deployments, or multiple ECD deployments might occur unintentionally in an unfolding and chaotic situation. “An absolute prohibition could result in a single deployment failing to control a subject and in an escalation to a higher level of force” See response above to Recommendation #94.

Recommendation #46:

MPD should modify ECD guidelines to: 1) require medical clearance for subjects on whom an ECD has been used, who have been screened for medical conditions and who request medical attention, and 2) require that ECD darts be removed by medical personnel. City medical personnel, who may be tasked with providing clearance, should be consulted before guidelines are changed. [OIR Report #96]

Discussion: MPD believes that “to require transport to a hospital for probe removal is wasteful and unnecessary” since medical personnel do nothing more than officers to remove the probes. It states that its practice of removing probes on its own is consistent with most other departments nationally and with the International Association of Chiefs of Police model policy. While we recognize that there are differing perspectives on this issue, we side with the many police agencies that recognize that it would only take one occurrence with a bad consequence to include and justify the precaution for medical clearance and dart removal by medical professionals.

Recommendation #47:

MPD should modify the prohibition on shooting at moving vehicles to read: “Firearms shall not be discharged at a moving vehicle unless: (1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or (2) the vehicle is operated in a manner that reasonably appears deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical).” [OIR Report #99]

Discussion: MPD notes that the language proposed “ignores the potential for the intentional use of a vehicle as means of killing or as a terroristic tool.” It instead proposes this language: “Firearms shall not be discharged at a moving vehicle unless: (1) A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or (2) The vehicle is operated in a manner that reasonably appears deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical). **NOT IN OIR RESPONSE**”

The Ad Hoc Committee has one recommendation for the City to implement pertaining to use of force.

Recommendation #48:

The City should have regular dialogue with its police liability insurer to examine what risk management initiatives might result in lower premiums or could be funded by the insurer. [OIR Report #77]

Accountability

The Ad Hoc Committee's recommendations having to do with ensuring and increasing the accountability of MPD to "be who it says it is" fall into two categories. The first category includes recommendations having to do with MPD's implementation of policies and practices for oversight and review (internal accountability) to ensure that the Department is operating according to its own proclaimed policies and procedures. The second category provides for citizens' review (external accountability) of MPD actions.

Internal Accountability

Recommendation #49:

MPD and the City should discuss the most efficacious way to analyze the demographic data currently being collected on arrests, summons, and use of force. [OIR Report #9]

Discussion: MPD notes that expanding these efforts may take additional resources.

Recommendation #50:

MPD should engage in regular internal assessments (such as surveys) and other feedback opportunities, to ensure that issues relating to minority status within the Department do not adversely affect individuals or groups, and to continue seeking potential remedies and reforms when such dynamics arise. [OIR Report #101]

Recommendation #51:

MPD should reinstitute an officer performance evaluation system. [OIR Report #105]

Discussion: MPD indicates its interest in implementing a performance evaluation system. *It notes that has tried various approaches to performance evaluations and currently employs what it calls a progressive approach to employee engagement and performance assessment through a process of 'Management by Walking Around' (MBWA), a formal quarterly review, and other tools. We believe that the evaluation system should not focus on measuring traditional police activity, but should focus on capturing information that is not as easy to acquire. For that reason, the daily activity logs that we advocate would be a source of raw information and data that MPD has traditionally not effectively collected and analyzed. It is the non-traditional information obtained from the daily activity logs that should be the basis of any evaluative system that MPD develops. MPD needs to develop evaluation metrics to clarify and emphasize its core values and philosophy of policing. It is also critical for MPD to obtain community and outside stakeholder input to incorporate shared values.*

Recommendation #52:

MPD should regularly audit performance evaluations to ensure that supervisors are uniformly documenting officer activity objectively and fairly. [OIR Report #106]

Recommendation #53:

MPD should review communications issues involving dispatch, among other topics, when MPD convenes a critical incident review, inviting managers from the Dane County 911 center to participate in cases where the effectiveness of communications is at issue. [OIR Report #111]

Recommendation #54:

MPD should remove the 90-day limit from its SOP on investigation of complaints and investigate all complaints that allege a violation of rules. [OIR Report #123]

Recommendation #55:

MPD should codify its current practice to expressly indicate in its SOP that it is committed to investigating anonymous complaints. [OIR Report #124]

Recommendation #56:

MPD should revise its SOPs so that every complaint alleging a policy violation receives a PSIA number. [OIR Report #125]

Recommendation #57:

MPD should ensure that violations of integrity are appropriately charged as such in the disciplinary process. [OIR Report #127]

Recommendation #58:

MPD should consider whether there is sufficient accountability in its disciplinary process regarding violations of integrity and force. [OIR Report #128]

Recommendation #59:

MPD should regularly evaluate serious disciplinary cases to determine whether, pursuant to Department policy, they should be subject to proactive release. [OIR Report #132]

Recommendation #60:

MPD should not rely entirely on the computer to identify early intervention candidates, but should employ its Early Intervention System to regularly request first-level supervisors to identify officers who might benefit from the remedial aspects of the program. [OIR Report #133]

Recommendation #61:

MPD should press forward toward full implementation of its Early Intervention System. [OIR Report #134]

Recommendation #62:

MPD should devise a feedback loop for its criminal justice partners about officer and Department performance. [OIR Report #17]

Discussion: MPD has had a longer history than most law enforcement agencies in seeking this input in a myriad of ways. MPD notes that formalizing a feedback effort would be challenging with outside agencies that are already generally overworked. We disagree; a simple email to all criminal justice partners asking a few questions seeking feedback on particular officers or MPD as a whole could be sent out and the criminal justice partners could decide whether they were too busy to respond. If the requests for feedback result in a paucity of results, MPD would still have attempted to obtain the information and could then determine whether alternative methods of seeking input might be considered. To date, MPD has not solicited regular feedback from prosecutors, jail supervisors, judges, public defenders, juvenile justice administrators, probation officers, and social workers.

Recommendation #63:

MPD should collect and document information pertaining to the work of neighboring officers and other specialized officers either through daily activity logs or other data collection methods that the Department deems appropriate for generating comparable data. [OIR Report #38]

Discussion: It might be helpful to distill our rationale for the re-implementation of such logs:

- MPD has long stated its desire that at least 50% of officers' time be engaged in non-traditional policing and has pushed this intention to City policy makers as a reason it needs to have a robust staffing commitment.
- If MPD has an evidence-based way to prove through data and analysis that the majority

of its officers are meeting or surpassing this goal, it should do so and publish that analysis to its public.

- If MPD has an evidence-based way of distinguishing officers who are achieving this goal and those who are not, it should do so, establish remediation programs for those who are not, and publishing that analysis (without identifying information) to its public.
- If MPD cannot perform Tasks 2 and 3 (beyond anecdotal acquisition of information) it should consider the reinstitution of daily activity logs to accomplish this goal consistent with our recommendation.

MPD's complaint that it should not be burdened with capturing this activity because it is difficult should not be the orientation of an agency with a long history of accomplishing difficult tasks. In our view, if MPD truly believes it is critical that its officers spend much of their time engaged in community-based policing, it is similarly critical that it devises data collection methods to learn whether its officers are doing so and remediate those that fall below departmental expectations. A daily log is one way of achieving this critical objective.

While the Police Association's response echoes some of the same concerns about the logs taking time away from officers' other responsibilities, it recognizes that supervision alone "doesn't provide the measurable data that is being sought." More computer-driven data-collection companies are providing platforms tailored for law enforcement intended to capture all of the day-to-day operational data points of a police agency. One such company is Benchmark Analytics. According to the Chicago-based Company's literature, its system has the ability to map the spectrum of on-duty actions of officers to "paint a full picture of an officer's patterns, skills, and abilities."

Recommendation #64:

MPD should develop a system to track and report patrol officers' specific problem-oriented activities, including results, ongoing efforts, and collaboration with community groups, to gain an evidence-based understanding of such efforts. [OIR Report #39]

Discussion: MPD currently has no formal evaluative process for its police officers. Daily activity logs and input from the community would perform the backbone of the evaluative process. In response to requests from Common Council, MPD began to publish a daily activity log that focuses largely on MPD's response to calls for service and observed criminal activity. A more concerted effort to capture and report "community policing" efforts, including problem solving, incidents of de-escalation, and the daily work of its special assignment units will: provide a more robust and complete record of the work that is being done by MPD; reinforce to patrol officers that MPD values a community policing orientation; provide additional data points with which to better assess important questions about resource allocation; and demonstrate to the public the nexus between police duties and enhanced public safety.

Recommendation #65:

MPD should track and evaluate the substantive work of Community Policing Teams to ensure consistent application of best practices in community policing apart from traditional law enforcement methods. [OIR Report #46]

Discussion: MPD's belief that drug and traffic enforcement constitutes community policing suggests a fundamental misconception of community policing philosophy. The Department's Community Policing teams should be dedicated to "community policing" in the classic sense, and CPT officers prepare daily activity logs so that there is a better record of what these non-assigned officers are spending their time doing. In addition to helping gauge individual performance, such documentation will provide MPD and its community a more comprehensive understanding of what CPT officers are or could be doing in the various districts.

Recommendation #66:

MPD should collect and document information pertaining to the work of the CPTs either through daily logs or other data collection methods that the Department deems will generate comparable data. [OIR Report #47]

Discussion: See discussions for recommendations #65 and 66 above.

Recommendation #67:

MPD should change its current SOP to require presentation and signature of the consent to search forms prior to executing a voluntary search. [OIR Report #107]

Discussion: MPD notes that it has an SOP on consent searches that is adequate; however it not address whether it agrees with President Obama’s Task Force on 21st Century Policing recommendation that when law enforcement seeks consent to conduct a search, it should first explain to a person that s/he has the right to refuse consent and obtain written acknowledgment that they have sought consent to search. If it does not agree, it should articulate why. If it does agree, the current SOP and training do not accomplish the objective of the Task Force, and its SOP should be modified consistent with this recommendation so that the objective can be achieved. Routine use of the consent to search forms created by MPD would align its policy with the Task Force recommendations and best practices, but use of the forms is currently optional. In order to ensure that Madison residents are fully informed of their right to refuse consent to search and to remove any dispute about whether the individual freely consented to a search, MPD must change its policy to require officers to use the forms absent exigent circumstances, and to document any such exigency.

Recommendation #68:

MPD should change SOP to require recording all internal investigations interviews with victims, witnesses, or complainants where the interview would could result in discipline for an officer, unless the situation makes it impossible or if a civilian witness declines. [OIR Report #126]

Discussion: Internal investigations focused on learning whether an MPD employee violated policy are critical to the Department’s accountability system and should comport with best investigative protocols such as recording interviews. Scarcity of resources or the delay required for transcribing recordings should not be viewed as an impediment to making this change in policy and practice consistent with best investigative practices.

The Ad Hoc Committee has one recommendation that it directs to the Police and Fire Commission.

Recommendation #69:

The PFC should consider the routine use of hearing examiners to conduct any hearings emanating from complaints received by the community or MPD. [OIR Report #144]

Discussion: One structural impediment that exists to the current PFC hearing structure is the makeup of the PFC itself. Commissioners are appointed by the mayor and often have additional full-time responsibilities. As a result, there can be scheduling challenges to hearing any particular case. One ameliorative measure that has been discussed and implemented in other Wisconsin cities is to have the responsibility to conduct the hearing assigned to a hearing examiner. Case law in Wisconsin has approved this approach as long as the ultimate decision remains with the PFC.

External Accountability

Recommendation #70:

MPD should relax its uniform requirement. [OIR Report #15] *MOVE TO CULTURE?*

Discussion: While MPD notes that officers must be prepared to take police action at all times while on duty and so must wear their uniforms, some residents feel that a uniform creates an unnecessary barrier and inhibits their ability to engage positively with officers. Officers in other departments, however, speak of their experience with “soft clothes” helping them relate better to their community.

Recommendation #71:

MPD should develop procedural justice guidelines within its officer-involved critical incident SOP to ensure that officers respond sensitively to witnesses’ and family members’ emotional and safety needs, and that, when legally permissible, witnesses and family members be kept apprised of the process and procedure related to the incident. [OIR Report #72]

Discussion: MPD’s current officer-involved shooting protocols provide little guidance to its personnel regarding contact with the family. The inherent tensions and emotions of these situations are clearly challenging, highlighting the importance of clear written guidelines. MPD’s lack of established protocols in this area has proved to be a detriment in some situations, including delays in family members’ access to critically injured individuals who have been transported to the hospital. MPD historically has involved the Crime Response Program in its initial response. It may also be helpful to integrate and incorporate the City’s recently-developed Rapid Response Team as part of the post-officer-involved shooting response. With respect to post-incident handling of witnesses, investigative priorities in the immediate aftermath of a shooting should be balanced with the rights of potential witnesses; authorities should be both clear in communicating options and responsive in deferring to witness preferences.

Recommendation #72:

MPD should provide accessible literature at its stations, encouraging feedback regarding the performance of its officers, including blank complaint and commendation forms. [OIR Report #122]

Discussion: MPD’s station lobbies have other informational messages, but they do not have complaint or commendation forms readily available.

Recommendation #74:

MPD should devise and promote a mediation program with the City to resolve civilian complaints outside the traditional disciplinary process [OIR Report #130]

Discussion: The City Attorney, on the other hand, presents a number of potential roadblocks to establishing a formal mediation program, none of which have prevented a number of other police agencies throughout the country from adopting one. New York City and Washington, D.C., for example, both have vibrant mediation processes that have served both their communities and police agencies well. The City Attorney also complains about cost as a deterrent to establishing such a program. In some jurisdictions, that cost has been mitigated by recruiting volunteers from the legal community or having the independent police auditor facilitate the program. We believe these roadblocks can be dismantled.

Recommendation #75:

MPD should continue to build upon its current practice of post-investigation complainant outreach, including the evaluation of cases for possible informal discussion opportunities with involved parties. [OIR Report #131]

Recommendation #76:

MPD should include information about whether a “shots fired” call leads to an arrest, reveals corroborating or non-corroborating information in published “shots fired” reports. [OIR Report #33]

Discussion: MPD notes that uncorroborated information reports of shots fired is included in data it releases. However, in the Chief's crime blog, uncorroborated reports have been included. We are pleased that MPD has provided additional guidance to officers on criteria for when an incident should qualify as a "shots fired" case and that it has been codified into a Standard Operating Procedure. We note that the SOP became effective on January 25, 2018, approximately a month after the issuance of the OIR report.

Recommendation #77:

MPD should consider resource neutral ways to supplement the staffing of its facilities and explore alternative shifts and house so that it can remain open for public access for additional hours. [OIR Report #34]

Discussion: If a person who works traditional hours wants to visit any MPD facility after work to talk to a station commander or ask a question, they cannot do so because of MPD's early closing hour. If a person wants to report a crime or make a complaint, they may call during open hours, and an MPD personnel will be dispatched to the individual's residence; however some people would prefer to come to the station to talk with MPD. MPD notes there is no resource-neutral way to accomplish this, but it does not respond to the OIR Report's suggestion of using volunteers to keep facilities open longer hours.

Recommendation #78:

MPD should seek input from the City and community stakeholders regularly (at least annually) in evaluating the performance of neighborhood officers. [OIR Report #41]

Discussion: MPD notes that it receives feedback from external stakeholders currently and that formalizing this process would be problematic. It does not respond to the recommendation that it formally and proactively "solicit" feedback regarding the performance of officers assigned to specialized units performing community policing functions. It expresses concern that if an officer receives no feedback, MPD might evaluate that office adversely. It further expresses concern that such an initiative would require contacting "thousands of people" in order to solicit feedback. We do not anticipate either of such consequence. For example, in the school context, such solicitation could be a simple email to the school community and juvenile justice agencies seeking input on the performance of the Educational Resource Officer at annual intervals: "How do you think our Education Resource Officer is doing? Are there suggestions you might have to improve our program?" We encourage the Department to focus on devising various practical and straightforward methodologies to accomplish feedback and defer concerns about the level of participation or anticipated results.

Recommendation #79:

MPD should seek input from school stakeholders and juvenile justice partners in performance of its EROs on at least an annual basis. [OIR Report #51]

Discussion: MPD notes that it receives feedback from external stakeholders and formalizing this process could be problematic. See response to recommendation #78.

Recommendation #80:

MPD should seek the input of stakeholders—including City leaders, prosecutors and defense attorneys, civil rights litigators, privacy advocates, the community at large, and rank-and-file officers—to identify and prioritize, to the extent possible, the intended benefits and potential drawbacks of any body-worn camera adoption before a body-worn camera pilot project is implemented. [OIR Report #135]

Discussion: Because the development of a body-worn camera policy is critical to both the effectiveness and public acceptance of a new program, City leaders and the community at large should be equal partners with MPD in reaching a reasonable consensus on policy.

Hiring, Training, and Culture

INTRO TEXT

Recommendation #80:

Explore Scotland's de-escalation methods and the UK's national decision-making model to evaluate whether any individual aspects should be incorporated **into MPD training, policies, and practices.** [OIR Report #26]

MPD notes that training staff can review the models to determine what aspects to incorporate into MPD training.

Recommendation #81:

MPD should work with the City and Dane County to recognize crime as a danger to public health and to develop strategies for prevention and remediation consistent with the UK's decision-making model. [OIR Report #28]

Recommendation #82:

MPD should assess its recruit training programs and patrol deployment strategies with an eye toward supporting and taking positive advantage of the unique perspectives and life experiences of its officers of color. [OIR Report #102]

Recommendation #83:

MPD should work with the Dane County Department of Public Safety Communications so training staff can establish a regular schedule for teaching at the quarterly communicators' in-service training at least once a year. [OIR Report #109]

Recommendation #84:

MPD should work with Dane County 911 center to develop scenario-based interagency training to better integrate the functions of patrol officers and dispatchers, particularly with regard to calls for service involving persons in mental health crises. [OIR Report #110]

Recommendation #85:

MPD should continue to strive for a diverse recruitment and hiring program, and regularly assess its criteria and any other hiring process to ensure there is no unnecessary exclusion of persons who otherwise might be excellent officers. [OIR Report #112]

Recommendation #86:

MPD should regularly seek input from its contract psychologists about ways to improve the background investigation process, both with respect to particular individuals' applications and more broadly on a systemic basis. [OIR Report #113]

MPD notes that it will require additional funding as this work is outside the current contractual agreement with the psychiatrists.

Recommendation #87:

MPD should consider modifying its Academy in order to provide students with non-police social service work exposure in the City's diverse communities prior to graduation. [OIR Report #115]

MPD notes that this would require extending the pre-service academy by two weeks (which will have a cost).

Recommendation #88:

MPD should study whether the Academy class ranking system has a disparate impact on persons from diverse backgrounds. [OIR Report #116]

MPD notes that it will task the MPD Equity Team with reviewing the academy class rank process and making recommendations for improvement if needed. MPD supports additional analysis of the system from an equity perspective, though a rigorous, data-driven analysis would require external professional assistance (with a resulting cost).

Recommendation #89:

MPD should consider more frequent and regular use of training bulletins as a mechanism for training staff to more regularly communicate with officers on timely topics relating to tactics, equipment, or other issues of concern. [OIR Report #119]

Recommendation #90:

MPD should continue to examine training protocols throughout the country and use that review to continue to improve its well-functioning training. [OIR Report #120]

Recommendation #91:

MPD should seek, encourage, and provide additional training opportunities outside the Department, particularly leadership training for first level supervisors. [OIR Report #121]

Recommendation #92:

MPD should solicit the Madison community regularly for topics to be presented at the pre-service Academy or during in-service training. [OIR Report #118]

Recommendation #93:

Consider the feasibility of moving sergeants to the Association of Madison Police Supervisors, working with the City and the Professional Police Officers' Association. [OIR Report #108]

Discussion: In Madison, the officers' association also represents all MPD sergeants. In addition to being philosophically inconsistent, the joint representation of officers and officers of rank can create inherent problems for sergeants who are attempting to hold their subordinates accountable. The association may find itself in the position of advancing a grievance against a sergeant whom they are also tasked with representing. We have been informed that it would be difficult to unwind the current situation and move sergeants to the supervisor's union because of staunch resistance anticipated by the MMPOA.

Recommendation #94:

Consider whether using Academy class rank for purposes of seniority places undue importance on such criteria and whether there are alternatives for determining the "seniority" of students from the same class. [OIR Report #117]

Discussion: MPD indicates that competitive class ranking is important to provide incentive for recruits to give maximum effort and then states that the impact of the class rank does not have a major impact on an officer's career options. MPD slightly misses the point here; officers and former officers of color have indicated their "perception" that Academy class rank had an impact on their subsequent career. MPD should consider eliminating reliance on objective testing to determine class rank, particularly if the study OIR recommends (Recommendation #88) shows disparate impact.

Recommendation #95:

MPD will amend SOPs to require that, prior to any consent to search, officers: 1) explain to individuals that they have a right to refuse consent; 2) audio record the entire consent encounter or obtain a

signature granting voluntary consent to search (when audio recording of the encounter is not possible). MPD will also collect data on the demographics of who they are asking for data from. [OIR Report #107]

Discussion: President Obama's Task Force on 21st Century Policing recommended that law enforcement officers be required to seek consent before a search and explain that a person has the right to refuse consent when there is no warrant or probable cause. Furthermore, officers should ideally obtain written acknowledgement that they have sought consent to a search in these circumstances. In order to ensure that Madison residents are fully informed of their right to refuse consent to search and to remove any dispute about whether the individual freely consented to a search, MPD should change its policy to require officers to use the forms absent exigent circumstances, and to document any such exigency.

Recommendation #96:

The City should revise the current agreement with MPPOA to provide more flexibility regarding shift and location assignment of officers. [OIR Report #104]

Discussion: MPD has no managerial ability to influence patrol shifts based on officer performance and experience, patrol district or community needs, or any other rationale. The potential drawbacks to this limitation including: "easier" shifts and assignments are filled with officers with significant maturity and experience; tenured officers are able to successfully obtain assignments working for supervisors who may be less demanding or have lower performance expectations; the seniority shift rule, with its annual rotations, becomes a potentially distracting preoccupation for weeks or even months prior to the actual change; the seniority rule prevents MPD from an officer that has been the source of friction between members of the community to another station or shift without the officer's approval. In short, the seniority shift rule significantly erodes managerial ability to devise a work force that will have the greatest potential for success and surrenders officer deployment to the idiosyncratic preferences of the individual officer. Because the rule has been contractually agreed to as part of the labor agreement between the City and the Association, it will require a change in the agreement to modify it.

Recommendation #97:

The Madison Professional Police Officers Association should make efforts to enlist greater participation by officers of color, including in leadership positions. [OIR Report #103]

Relationship with the Community

Central to the Ad Hoc Committee’s mission is to help the MPD find ways to create a police department that operates according to best practices in policing. This includes acting in a color-blind manner, promoting effective crime reduction, and engendering trust equally among all Madison citizens.

In order to realize the objective of serving all communities equally and sensitively, the Ad Hoc Committee recommends that MPD:

Recommendation #98:

MPD should continue collaborative programs that address systemic inequity, such as the “Unpaid Ticket Resolution Days,” and hold community courts in cooperation with community partners to address systemic inequity. [OIR Report #2]

Discussion: While the City Attorney’s Office is not in support of continuing “Ticket Resolution Days,” the Ad Hoc Committee endorses them as one example of several programs that MPD has initiated in efforts to reduce systemic disparities, while noting the valid concern that replicating this particular program should be done cautiously, and suggesting that MPD continue its active role in other collaborative programs that address systemic inequity, such as:

- Responding to President Obama’s Task Force Recommendations
- Workplace cultural exchanges
- MPD taking its own photographs of individuals cited for minor offenses
- Developing a Spanish language enhancement of the second notice paperwork for parking citations
- Municipal Court Diversion program
- Urging business owners to forego civil remedies for retail theft

Recommendation #99:

Enhance its structural and philosophical commitment to the Judgment Under the Radar program, which provides formal training to police officers on unconscious or implicit racial bias, as well as assess the source of any negative officer responses to these presentations. [OIR Report #4 and #5]

Discussion: Despite MPD’s response that it seeks input and feedback on all its training and that it pays close attention to negative feedback and/or reactions, MPD’s response does not acknowledge negative feedback concerning Judgment Under the Radar, whether the reasons for this feedback was discovered, or whether remedial action was taken.

Recommendation #100:

Commit to a reenergized Racial Disparity Impact Committee and continue organizational support/provide incentives for officer participation, such as???. [OIR Report #3]

Recommendation #101:

MPD should provide a language translation function for its website (per the draft form of the Madison Department of Civil Rights’ Language Access Plan). [OIR Report #6]

Recommendation #102:

MPD should support officer-driven outreach efforts (such as Amigos en Azul) within target communities. [OIR Report #8]

MPD notes that this may require additional resources.

Recommendation #103:

Engage with community members around controversial events, including officer conduct that does not reflect MPD's core values or best performance standards. [OIR Report #14]

Recommendation #104:

Find and employ new ways of soliciting and encouraging community feedback about its performance. [OIR Report #16]

Discussion: MPD notes that this effort will require more resources. The Ad Hoc Committee endorses this approach if the City can afford it, while being unable to address resource demands or constraints.

Recommendation #105:

MPD should revise its policy to discourage the use of family, friends, or bystanders as interpreters, except when: A) MPD translation resources are not available and the situation is exigent; B) the involved party initiates phone or in-person contact to continue conversation in person or by phone and requests that a family member or friend serve as translator; or C) the involved party is the subject of a criminal investigation. When family, friends, or bystander translators are used, the absence of other translators should be noted. [OIR Report #18]

Discussion: MPD notes that the Department of Civil Rights' draft Language Access Plan requires video relay in the field starting XXXX, making the need for translators rare. RESPONSE?

Recommendation #106:

Devise policy to instruct officers not to rely on social workers for translation (without pre-existing understanding with MPD). [OIR Report #19]

Discussion: MPD notes that DCR is working on a City-wide policy that does not permit social work agencies to provide translation, even by agreement. RESPONSE?

Recommendation #107:

MPD should incentivize all bilingual officers to provide translation in the field. [OIR report #20]

Discussion: MPD notes that the City's Language Access Plan will govern this arrangement, while the City Attorney's Office notes this arrangement would be subject to collective bargaining and could include a pay differential, and the MPPOA says it supports it. RESPONSE?

Recommendation #108:

MPD should audit officers' use of the City's telephonic translator program in conjunction with the Office of Civil Rights to gauge its effectiveness. [OIR Report #21]

MPD notes that it will work on this in conjunction with the Department of Civil Rights.

Recommendation #109:

MPD should expand its restorative justice disciplinary program to authorize and address courtesy violations or other low-level violations involving police/civilian contacts. [OIR Report #129]

In order to improve its community policing function, the Ad Hoc Committee recommends that MPD:

Recommendation #110:

MPD should broaden its selection process for choosing neighborhood officers to include City and community stakeholders. [OIR Report #36]

Recommendation #111:

MPD should ensure an effective transition between outgoing and newly assigned neighborhood officers.

[OIR Report #37]

Recommendation #112:

MPD should develop its evaluative metrics in conjunction with the neighborhood OF WHAT??? the stated mission of Neighborhood Officers and prepare at least annual performance evaluations of Neighborhood Officers based on those metrics. ??? [OIR Report #40]

MPD notes that Neighborhood Officers will continue to complete annual reports and to assess neighborhoods on an annual basis and has requested additional information from OIR on the annual performance measures used by other agencies.

Recommendation #113:

MPD should publicize community-policing activities. [OIR Report #42]

Recommendation #114:

MPD should continue to participate in community-initiated events. [OIR Report #12]

Recommendation #115:

MPD should utilize neighborhood officers to develop, facilitate, and measure specific problem-oriented policing projects. [OIR Report #43]

Recommendation #116:

MPD should find ways to use officers who practice problem-oriented policing in field assignments for modeling, training, etc. [OIR Report #45]

Recommendation #117:

Commit to a new collaborative engagement process with the City's Neighborhood Resource Teams to establish new goals and performance measures for proactive problem solving. [OIR Report #44]

Recommendation #118:

MPD should train detectives and officers in the use of trauma-informed interviewing skills. [OIR Report #25]

MPD notes that it will offer the topic of trauma-informed training to its list of future training priorities; however, offering such training would be dependent on the availability of resources, including qualified trainers, money for training, and the need for competing trainings.

Recommendation #119:

MPD should continue to expand local Captain's Advisory Groups. [OIR Report #22]

Discussion: MPD notes that this may require additional resources.

In order to improve administrative and review functions, the Ad Hoc Committee recommends that MPD:

Recommendation #120:

MPD should devise a media release policy with stakeholder input, about when arrests of persons will be proactively released. [OIR Report #32]

Discussion: MPD agrees that additional language could be added to its Media Release SOP for consistency.

Recommendation #121:

MPD should dialogue with its criminal justice partners about the possibility of extending restorative justice programs to incidents that attract only low-level media attention. [OIR Report #11]

Recommendation #122:

MPD should assign increased responsibility for oversight to its CORE team, including analysis and assessment of individual initiatives. [OIR Report #7]

Discussion: MPD notes that it lacks the social science resources for analysis and has requested guidance from the OIR team on how to accomplish it.

Recommendation #123:

MPD should continue to dialogue with the City's Rapid Response Team to develop trust and provide additional services to and maintain a positive and working relationship with major crime victims. [OIR Report #23]

Recommendation #124:

MPD should conduct random review of footage to evaluate officer performance. [OIR Report #24]

Discussion: MPD notes this this may require additional resources and requests information from OIR on how to do this.

Recommendation #125:

Dialogue with the City and with the UW-Madison Law School to identify ways to reintegrate law students into MPD's learning and problem-solving functions. [OIR Report #35]

In order to improve specialized units' (ERO and MHO) function, the Ad Hoc Committee recommends that MPD:

Recommendation #126:

MPD should develop a mission statement for each specialized MPD unit. [OIR Report #31]

Recommendation #127:

MPD should develop formal mechanisms to bring a broader group of community stakeholders into the selection process for special assignments. [OIR Report #29]

Discussion: MPD notes that its agreed-to selection process for special assignments includes a community representative, but that it may not be able to identify a community member to take part, while the MPPOA notes that this arrangement would be subject to collective bargaining. SEE OIR RESPONSE 29

Recommendation #128:

MPD should review the activity of EROs regularly to ensure appropriate balance between prevention, problem-oriented policy, and enforcement. [OIR Report #48]

Recommendation #129:

MPD should work with school administrators to ensure congruity of mission and responsibility of EROs. [OIR Report #49]

Recommendation #130:

MPD should include faculty juvenile justice partners, and student leaders in selecting EROs. [OIR Report #50]

Recommendation #131:

MPD should collaborate with the school district to communicate with the public the range of services it provides in each high school. [OIR report #52]

Recommendation #132:

MPD should closely review arrest and citations issued by EROs to ensure appropriate use of discretion and avoidance of unnecessarily entering juveniles into the criminal justice system. [OIR report #53]

Recommendation #133:

MPD should develop a Field Training Officer program for its newly assigned EROs to foster transfer of skills and orientation of high functioning outgoing officers. [OIR Report #54]

Recommendation #134:

MPD should consider specialized training for its EROs in the arena of dealing with students who have identified behavioral/emotional issues. [OIR Report #55]

Recommendation #135:

MPD should develop guidelines or protocols for the Mental Health Team to periodically reviewing mental health safety bulletins and associated alerts to assess whether they should be amended or purged from the system. [OIR Report #58]

Discussion: MPD notes that the mental health team will review the process to ensure that the alert expirations are set appropriately since, as public records, documents cannot be purged until a set number of years has elapsed.

Recommendation #136:

MPD should communicate with the public regularly about activities of its Mental Health Team by, among other methods, including a sample narrative of the team's activities in the daily crime blog. [OIR Report #59]

Recommendation #137:

MPD should devise methods to fully document the daily activity of MHOs. [OIR Report #60]

Recommendation #138:

MPD should fill the position of Mental Health Team sergeant and maintain funding for this position. [OIR Report #61]

Recommendation #139:

Continue to integrate use of force training scenarios with scenarios involving someone in a mental health crisis. [OIR Report #62]

Recommendation #140:

Cross-train patrol tactics and force instructors to also run and debrief mental health crisis scenarios to strengthen the Department's message about the importance of de-escalation. [OIR Report #63]

Recommendation #141:

MPD should look for innovative ways to fill the critical gaps in its efforts to collect data on mental health contacts with police. [OIR Report #65]

Recommendation #142:

MPD should create consistency in data gathering and researching across MPD by finding ways to integrate the MPD Mental Health Team's data-gathering and analyzing volunteers' work with the rest of the Department. [OIR Report #67]

Recommendation #143:

MPD should dialogue with the Police Officers' Association (to amend the current contractual agreement) so that EROs and other specialized officers focused on community policing, such as Neighborhood Officers, Mental Health Officers, and Community Policing Teams with established effective working

relationships in their specific assignments, as determined by input from Department supervisors, the officers themselves, and stakeholders at the respective campuses can remain in their role beyond five years. [OIR Report #56]

Discussion: Some officers are better suited to the role of ERO than others. A genuine desire to work constructively with a student population, a recognition of the unique responsibilities and dynamics of policing in the school setting, and a facility for connecting with students while maintaining appropriate boundaries are qualities that people possess to different degrees. As with other “specialty assignments” within MPD, the process for choosing EROs is a competitive one, which we endorse. However, MPD should find ways to allow well-regarded officers to have the latitude to stay in the position beyond the established tenure of four years, while recognizing the fundamental fairness in rotating roles and recognizing the restrictions on MPD discretion that flow from the current labor agreement with the officers’ association. To strengthen the current selection process, MPD could expand the list of “front end” participants to include school district administrators, faculty, student leaders, and persons responsible for managing the County’s juvenile justice programs, who have significant involvement and knowledge about the work of EROs and who offered interesting insights to us regarding these questions. As for mitigating the inevitable gaps between one officer’s performance and another’s, we encourage efforts at developing training programs and feedback loops that will promote clear expectations and consistency in execution.

Recommendation #144:

MPD should move to a soft alternative uniform for EROs as a means of reinforcing the unique mission of these officers in the school setting. [OIR Report #57]

Discussion: The “soft uniform” we endorse makes sense in projecting the desired accessibility and positive presence of EROs. More steps in the area of public outreach, and coordination with the external group initiated by the school board, could also be advantageous. MPD notes that the soft uniform could have an adverse impact on EROs being identified as an officer and their ability to respond effectively to disturbances and confrontations.

Recommendation #145:

MPD should develop a set of clearly defined performance measures for the Mental Health team that can be consistently tracked and monitored to provide benchmarks for defining success for the mental health program. [OIR Report #66]

Discussion: MPD notes that the issue of mental health crises “goes far beyond something that the police can remedy; so, while it is appropriate to explore measure that evaluate the Mental Health Team, community progress on the overall issue requires effort from other stakeholders.” Data issues are particularly important to a program like the MHO team, a relatively new program whose resources have been diverted from other tasks. There is the need to capture results-oriented data as a way to monitor the program’s success and to help generate evidence on the strengths and weaknesses of the program.

The Ad Hoc Committee addresses the next recommendation to the City:

Recommendation #146:

MPD should amend the mental health SOP to include the tactical principles MPD trains and expects officers to employ in situations involving individuals in mental health crisis; break the SOP into several policies to address separate topics. The City of Madison should create dedicated group of mental health first responders, outside of MPD, modeled after the CAHOOTS program of Eugene and Springfield, Oregon, to

respond to known mental health crises, and funded through whatever mechanisms the City deems appropriate (be it in partnership with the County, exploration of grants, or other).
[OIR Report #64]

Discussion: The SOP is five pages long and includes guidelines for response to various situations, emergency detention procedures, description of the Mental Health Liaison/Officer program, and dealing with dementia patients at assisted living facilities. This range of subjects leads to an overly long policy in which some important concepts are overshadowed. The Department should consider breaking up the SOP, with separate policies addressing the particulars of emergency detention criteria and procedures, other specialized responses (i.e., dementia patients), and response guidelines. In addition, the SOP mentions officers' training to de-escalate crisis situations, but does not specifically address tactics or procedures for handling crisis situations particular to individuals who officers believe may have mental health issues. A policy outlining guidelines for response to mental health crises should include specific reference to the principles the Department expects officers to employ in these situations, consistent with the training they receive. Finally, the Department should eliminate its use of the term "abnormal behavior" from its policy because of the potential for promoting bias and stigma such language carries. MPD notes it will remove the wording "abnormal behavior" from its SOP, but believes that it is better not to break the SOP into separate categories for ease of location by officers. We appreciate the concern about organizational issues and the desire to group related policies together, but nonetheless continue to find the SOP to be somewhat confusing in its scope. Cross-referencing that SOP may be useful for officers and the public.

OIR Team's Overview of the OIR Report Recommendations

- 1) MPD and community engagement
 - Re-emphasis on original principles of “problem-oriented policing”
 - Further commitment to the effective and progressive “Restorative Justice” programs
 - Re-integration of MPD with UW as resource and partner
 - Mechanisms to seek community and stakeholder input regarding performance of specialized and patrol officers
 - Formalized community input on selection of special assignment officers, promotion process, policy development, creation of strategic plan
 - Enhancement and expansion of the “Community Advisory” Groups
 - A Madison Police Department always open for business
 - Clear sense of mission and consistency across the ERO program
 - Convening of town halls and listening sessions following a controversial incident
 - Greater transparency and outreach through social media, other feedback mechanisms
- 2) MPD policy and procedure
 - A) Use of Force
 - Going beyond Graham vs. Connor
 - Recent updates and the value of collaborative input
 - De-escalation techniques
 - Tactical Repositioning
 - Taser
 - Foot Pursuit
 - Shooting at Moving Vehicles
- 3) MPD internal review mechanisms
 - A) Critical Incident Review
 - A multi-staged process that includes initial assessment, administrative interviews of involved and witness officers, thorough and automatic administrative review post-D.C.I., and subsequent action items as warranted
 - Litigation can be accommodated and embraced (and can be a source of useful feedback); Development of public corrective action plan Internal referrals
 - B) Force Review
 - Establish investigative protocols
 - A robust and standard “Supervisor Review” process
 - Sergeant level
 - Policy, tactics, training
 - Roundtable review of selected use of force incidents
 - Civil Litigation and the Corrective Action Plan
 - Internal Affairs Investigations
 - C) Current protocols for shootings and other major events
 - Criminal vs. Administrative
 - Limitations in the current process
 - No standard vehicle for holistic evaluation, reform, and feedback to personnel
 - Accountability and policy, training, tactics, etc.
 - D) Making complaint and commendation forms more readily accessible
 - Exploring mediation programs for complaint resolution
 - Creating alternatives to traditional discipline
 - Ensuring that discipline is meaningful, and progressive for repeat offenders
 - Evaluating influence of appellate process on accountability

- Creating outside investigative model for some MPD complaints
- 4) MPD programs and operations
 - Collection and synthesis of data regarding police officer and special assignment officer activity
 - Meaningful personnel evaluation process that incentivizes problem-solving policing
 - Continued evaluation of MOU-driven seniority rules
 - Continued development of early intervention system
 - Reexamine the role of sergeants and the value of supervisory training
 - 5) MPD personnel and culture
 - Recognize officers who represent and enact
 - Department's highest values
 - Regularly seek input and views of officers in confidential and meaningful ways
 - 6) Technology and Oversight – Hybrid model
 - “Professional” auditor with access, as accountable to community board
 - Complaint intake
 - Regular meetings, public reporting
 - Assigning the auditor to report on implementation of any OIR Group recommendations

