

Findley #38:

In the interest of preventing false confessions and enhancing community trust, MPD should adopt a policy, and provide corresponding training to all investigating officers, providing that, apart from the deceit inherent in appropriate undercover operations, interrogating officers should not, except in extraordinary circumstances, and when feasible with the prior approval of supervisory staff, utilize deceit about the material facts of the case during interrogations.

Discussion: For decades, the dominant interrogation tactic employed by most police departments in the United States has been the Reid Technique, or a variant of that approach. Under this approach, police are trained to make an early determination of a suspect's guilt and then to shift from an information-gathering "interview" to a guilt-presuming "interrogation." The goal of an interrogation, under this method, is not to obtain information, but solely to obtain a confession. In its most rigorous form, the Reid Technique involves a nine-step process designed to isolate a suspect, break the suspect down, convince the suspect that he or she will be convicted (by for example, telling the suspect about overwhelming evidence collected, which often includes lies about evidence that does not actually exist), and make confession appear to be the best choice under the circumstances, offering the best resolution to a bad situation (by suggesting leniency or a moral justification for the crime). The method has proven to be very effective, but unfortunately it is so powerfully psychologically coercive that it has been proven effective at getting confessions from the innocent, as well as the guilty. Indeed, nearly 25% of all DNA-based exonerations of wrongly convicted people in the United States—almost all in serious cases like rape and murder—have been in cases in which the accused was coerced into confessing falsely.

Much to its credit, the MPD does not teach or employ the Reid Technique, but instead utilizes less overtly coercive practices. But at least one vestige of the Reid Technique remains—police in Madison are permitted to employ deceit when they question suspects. The Committee believes that deceit by police officers, except in undercover operations (where deceit is of course inherent and unavoidable), should be prohibited in all but the most exceptional circumstances, for two reasons:

1. The record of wrongful convictions demonstrates that use of deceit during questioning of suspects, particularly deceit in the form of false claims about evidence, runs too high a risk of inducing a false confession. The MPD informed the committee that its officers do not routinely utilize deceit, but it objected to a blanket ban on deceit (as originally proposed) because it believes that in rare circumstances deceit is necessary. The Committee, however, notes that most European nations ban deceit during suspect interrogations, and that those interrogations continue to produce confessions at rates comparable to those in the United States, and often with more and richer information in the confessions and related statements. Given the MPD's concerns, however, the Committee modified this recommendation from a complete ban on deceit to strict limitations on the circumstances in which deceit can be used during questioning of subjects. The Committee believes, additionally, that approval by a supervisor prior to use of deceit in most cases can serve as an important reminder to officers and detectives about the risks and disadvantages of deceit, and can help to ensure that it truly is limited to extraordinary circumstances.
2. Additionally, for a department striving to gain the trust of and improve relationships with all of the communities it serves, allowing officers to lie to community members is counter-productive. A Department known to lie to individuals it has contact with is a Department that will struggle to earn the trust of the community, especially in those

communities that have been historically subject to stops, arrests, and questioning at disproportionately high rates—the very communities with which police-civilian relations are already the most strained.

Findley #40:

MPD should provide mentors for promising officers from underrepresented groups to help them prepare for and be motivated to apply for promotions.

Discussion: This recommendation came to the Committee indirectly through conversation with an MPD officer of color, who thought it would be very helpful, and is based on the recognized need of the MPD to fortify relationships with minority communities by ensuring representation of persons of color in the ranks of command staff. MPD supports the concept, and informed the committee that it already *“has a formal mentorship program, where all newly hired officers are paired with a veteran officer/mentor. Commanders and supervisors are encouraged to identify promising officers – including female officers and officers of color – and provide support and mentorship to them. This can include providing encouragement, or more direct support (such as identifying relevant training to attend).”* MPD thus notes that along these lines, it already provides considerable support for all officers, including officers of color. The Committee commends the MPD for this, but encourages the MPD to engage in even more formalized mentoring approaches for promising officers from underrepresented groups, geared to facilitate their promotion.

Findley #41:

MPD, in conjunction with the Independent Monitor, is encouraged to evaluate its current training, SOPs, and code of conduct to determine if they can be enhanced to guide discretion and provide additional guidance to officers regarding how they respond when they encounter people driving without a valid license or committing other minor traffic infractions or when to ticket and/or arrest homeless people (for trespassing or obstructing the sidewalk, etc.), or ticket and arrest people for engaging in other low-level offenses that tend to disparately affect low-income people.

Discussion: How to respond to low-level offenses is one of the decision points that confronts patrol officers on a routine basis and that requires the exercise of a high-degree of discretion. It is also is a contact point that disproportionately affects low-income people and marginalized groups (e.g. undocumented immigrants driving without a license). Stops and sanctions for low-level offenses can produce adverse psychological and societal impacts, and erode trust in the police. The MPD already encourages officers to seek resolutions to such situations short of arrest or ticketing. But without formalized guidance on how to respond to such situations, discretion can be exercised in uneven ways, often resulting in unintended disparities along lines of race, income level, mental health status, and personality. Formalizing the policies for responding to such low-level incidents—infractions for which arrest or ticketing can often be counter-productive by making it more difficult for the affected individual to comply with the law—can help ensure that optimal responses are employed in each case and reduce unwarranted disparities in arrest and ticketing rates.

The original recommendation proposal was modified by the Committee to include participation of the Independent Monitor. It was also modified to replace the clause *“when police should stop people driving without a valid license”* with the clause *“how they respond when they encounter people driving without a valid license,”* given

questions about the legal limits of officer discretion (i.e., whether it can extend to not even stopping a known unlicensed driver).

Findley #42:

MPD should develop specific policies, training, and code of conduct standards intended to limit strikes to the body to circumstances where they are truly necessary and provide specific guidance as to what those circumstances might be and in all circumstances ban strikes to the head and strikes to individuals who are non-resisting or in restraints.

Discussion: MPD officers are trained to go through a series of escalating responses to combative or resisting subjects. Among the authorized techniques is the delivery of blows or strikes to the individual. No policies limit the use of such blows, however, beyond the general policy and training to use the least force necessary, and only to escalate to techniques such as striking the individual if less violent efforts are not alone working. The Committee is concerned that permitting officers to strike individuals whenever they deem it useful because a subject is continuing to be resistant or combative is unseemly and inappropriate in a free society operating under the rule of law. Police officers are human beings subject to the ordinary range of emotions that can produce violent responses in situations evoking a high degree of agitation. Permitting officers to act on those emotions by striking individuals is inappropriate. By explicit policy and training officers should be limited to delivering strikes only in those circumstances where such force is truly necessary for protection of the officer or others or under other extreme circumstances. Anecdotally—based on statements from individual officers and review of videos of encounters in which MPD officers have been caught striking individuals in the course of taking them into custody—it appears that delivering such blows as a method of restraining and subduing an individual is rarely productive. Indeed, it is hard to imagine how such blows would mitigate a violent encounter short of a blow so violent as to incapacitate the subject. Moreover, as a matter of public and community relations, the MPD has suffered significantly from the negative perceptions generated by videos of subjects being punched and struck even while being held and restrained by several officers. In addition, comparisons with surveys of other U.S. police departments suggest that the MPD may use bodily force at rates that are somewhat higher than average. Given that one of the primary challenges facing the MPD is to build trust and confidence in Madison's various communities, strict limitations on hitting or striking individuals should be in place. The MPD maintains that striking individuals, while rarely appropriate, is sometimes necessary, and can avoid the necessity of implementing even more dangerous or lethal force. Accordingly, the Committee does not recommend banning body blows altogether, but does believe they should be severely curtailed by explicit written policies and training to those circumstances where they are truly necessary, and that they should never be permitted when a subject is restrained and that blows to the head should never be permitted.