

The Genesis and Mission of the Ad Hoc Committee

On Saturday, March 7, 2015, Madison, Wisconsin, woke up to a news story that seems now-too-familiar in the United States—an unarmed Black man had been shot and killed by a white police officer. Tony Robinson died on March 6, 2017, after having been shot seven times by a 12-year veteran of the Madison Police Department (MPD). The incident took place a little over half a year after the killing of Michael Brown in Ferguson, Missouri, on August 9, 2014, an event that had pushed police treatment of Black Americans to front-page news across the nation. In Madison, District Attorney Ismael Ozanne declined to prosecute the officer for the shooting of Tony Robinson, and MPD found the shooting to be within policy. Nonetheless, the City's insurer saw sufficient vulnerabilities in the city's case that it subsequently settled a civil rights law suit with Tony Robinson's family, in which the family alleged excessive use of force, for \$3.35 million.

The shooting brought to a head long-simmering tensions between the MPD and some of Madison's communities, particularly communities of color. Reactions included widespread sadness as well as concern and even outrage. Call for reform mounted when it was reported that the officer in Tony Robinson's case had been responsible for another controversial fatal officer-involved shooting eight years prior, for which he had received an MPD Medal of Valor. Thousands marched in protest. Many, including high school and university students, demanded immediate solutions in Madison to issues, highlighted by the Black Lives Matter movement, of police violence against Black people.

On May 21, 2015, following Tony Robinson's death and the public uproar it generated, the Madison Common Council adopted a resolution to create the Madison Police Department Policy & Procedure Review Ad Hoc Committee, a diverse citizen body consisting of 15 members, whose charge was 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 Madison, 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, rocked Madison and Dane County citizens from complacency 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 racial disparities in 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 at the front end of the criminal justice system.

The concerns that motivated the Council, however, extended beyond race. On November 9, 2012, two years and four months before the shooting of Tony Robinson, police had shot and killed an unarmed white man in Madison. On that night, Paul Heenan returned home intoxicated and mistakenly entered a neighbor's house. The neighbor began to escort him home, but Heenan was confused and resisted. When MPD arrived on the scene, Heenan, drunkenly flailing his arms, approached an officer, and the officer shot and killed him. After an internal investigation and review by the District Attorney, the officer was cleared in the shooting, but soon thereafter was forced to resign for unrelated violations of MPD policy. Mr. Heenan's family sued and the city's insurer settled for \$2.3 million. Paul Heenan's death helped spark legislation to require independent outside agencies to investigate police shootings in Wisconsin. A year and a half after the shooting of Paul Heenan, two MPD officers fatally shot a

suicidal young woman, Ashley DiPiazza, in her apartment. Again, the District Attorney and MPD cleared the officers, and again, the family of the deceased initiated a civil rights lawsuit, resulting in an adverse jury verdict against the city and, ultimately, a \$4.25 million settlement. A commonality in all these cases, reflective of a national pattern, was that a police response to a person in crisis—a response often precipitated by a 9-1-1 call seeking help for a friend or family member—had ended in tragedy.

It was in this context that the Ad Hoc Committee began its work when it held its first meeting on December 8, 2015. During the past three-and-a-half years, the Committee has undertaken to analyze comprehensively the City of Madison's Police Department's procedures and policies and to find ways in which the Department can improve, and the divides between the MPD and its many constituent communities can be bridged.

Committee members represent the many faces of Madison, racially, ethnically, and economically as well as in sexual orientation and gender identity, 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 concerns about excessive or selective use of force and racially mediated arrest disparities, promote transparency and trust in the work of the Department, and recommit the City and the Department to fundamental principles of community- and problem-oriented policing. We also commend the Council Executive Committee's President's Work Group for the work it has 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 we commend the Community Response Team—a uniquely active group of concerned community members—for its extraordinary engagement with these issues and the specific recommendations it submitted to the Committee to supplement 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 what is already good about the MPD and reform what can be made better. Of course, we thank all of the committed citizen members of the Ad Hoc Committee, who met sometimes twice a month and at times even weekly for the past three-plus 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. It demands too much of law enforcement to expect police to resolve all of these issues themselves. We believe our city government must invest in measures to address the many issues that confront 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 can mitigate the need for a police response that arises when 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 should be viewed as a start, 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 deeply embedded in our society.

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 residents. We present to you—the Common Council, the Mayor, the MPD, and the community at large—a work-in-progress with the heartfelt request that you listen and reflect and keep the conversation ongoing.

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 in December 2015 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. A full list of individuals and organizations that presented to the Committee over the three-and-one-half years of the Committee's work can be found in Appendix XX to this Report. In late summer 2016, after a competitive process, the Committee selected 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. 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 of documents 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.

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 MPD Policy and Procedure Review Ad Hoc Committee process.

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 support for MPD officers interacting with emotionally disturbed persons (EDPs), including types of training and ongoing training strategies to improve interactions (in particular, 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 a set of precautionary use-of-force principles (necessity, proportionality, reassessment, totality of officer conduct, and immediate threat) 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 personnel management.
- 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 the future. (President's Work Group Action Items 2, 5, 10, 11, and 12).

The OIR Group completed its report in December 2017. 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. In January 2018, the Madison Police Department, the Madison Professional Police Officers' Association (MPPOA), and the City Attorney submitted responses to the OIR Report, including comments on its recommendations. In March 2018, the OIR Group delivered a "Supplement to the Final Report," which addressed issues or questions raised by the MPD, MPPOA, and City Attorney. And in November 2018, the MPD submitted an Update to its Response to the OIR Report, "as a progress report to update the community on MPD's work responding to the OIR report."

Beginning in March 2018, the Ad Hoc Committee began meeting once to twice a month to consider each of the OIR recommendations in turn, along with the responses submitted by the MPD, MPPOA, and City Attorney. In early 2019 the Committee increased the frequency of its meetings to up to four times a month in order to facilitate completion of its mammoth undertaking.

In November 2018, the Ad Hoc Committee issued a call inviting community organizations and individuals to submit any additional recommendations they wanted the Committee to consider. In response, the Committee received 46 additional distinct recommendations—28 from the Community Response Team, 5 from Ad Hoc Committee co-chair Keith Findley, and 13 from other individual community members.

Throughout the Ad Hoc Committee's process—from its first meetings through its final votes on each individual recommendation—a high-ranking representative of the MPD was present to work with the Committee to help it understand the MPD's positions and concerns and the realities of its work in practice. Initially, Captain Mary Schauf served as the MPD representative, with Captain James Wheeler substituting when necessary. During the process of considering and voting on specific recommendations, Assistant Chief Vic Wahl served as the MPD representative and attended every meeting to provide this assistance. The Committee is deeply indebted to Capt. Schauf, Capt. Wheeler, Assistant Chief Wahl, and the entire MPD for their patience, vigilance, and assistance throughout this process.

In addition, a representative from the City Attorney's Office attended each meeting—most often Assistant City Attorney Marci Paulsen, with Assistant City Attorney Lara Mainella substituting during the vendor contracting process. The Committee greatly appreciates the legal advice and assistance they provided. The Committee also wishes to acknowledge support and assistance provided by the Mayor's Office, particularly Deputy Mayor Gloria Reyes, who attended the majority of meetings. The Committee is also indebted to other city staff who participated in various aspects of its work, and particularly Rachel Rodriguez from the City Clerk's Office, who provided invaluable logistical support as well as Brian Pittelli of the Finance Department who guided us through the Request for Proposal.

Additionally, even after the OIR Group completed its contractual work for the City and submitted its report and supplemental report, OIR team leader Michael Gennaco continued, on a volunteer basis, to attend by telephone from California almost all of the meetings at which the Committee considered OIR-based and community-based recommendations, to provide the Committee with information, insight, and guidance. The Committee is profoundly grateful to Mike Gennaco and the OIR Group for this extraordinary generosity of time and uncompensated commitment to our process and product.

The process that the Committee followed in considering each of the recommendations submitted to the Committee was to consider it in light of the objectives of: 1) achieving maximum transparency, accountability, and community engagement; 2) implementing best practices in policing; 3) minimizing racial disparities and negative impacts on marginalized groups; and 4) minimizing use of force in general, and particularly deadly force.

After educating itself through extensive reading and testimony by relevant experts on each of the topics before it for consideration, and weighing input from the MPD, MPPOA, the City Attorney's Office, and the community, Committee members engaged in discussion and agreed—usually but not always unanimously—to either adopt each OIR item as suggested or with revisions. For a majority of the recommendations, the MPD was in full agreement with the recommendation. In some cases, when the Committee made revisions to the recommendations, the revisions preserved the OIR consultants' intent, while clarifying its prescriptions. In other cases, the Committee made changes to the recommendations to accommodate legitimate concerns or objections raised by the MPD, MPPOA, or the City Attorney's Office. In a smaller subset of cases, after carefully considering objections from the MPD, MPPOA, or the City Attorney's Office, along with research and input from others, the Ad Hoc Committee chose to adopt or modify a recommendation despite those objections. The Committee similarly reviewed action items from the President's Work Group report and community-submitted proposed recommendations, carefully weighing and evaluating input on each recommendation from the MPD, the City Attorney's Office, community members, and expert sources.