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Chicago Has the Blueprint for Lasting Police Accountability Reform, but Can the City Build the Future It Needs?

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*Feature Article***Chicago Has the Blueprint for Lasting Police
Accountability Reform, but Can the City
Build the Future It Needs?**

Austin Spillar

Who is policing the police? This has been the question that concerned members of Chicago communities have been asking for many decades, and in many ways, it was a question to which they already knew the answer.¹ Back in 1972, the Metcalfe Report was released by a panel convened by South Side Congressman Robert Metcalfe in response to the death of 70 year-old African American dentist Dr. Daniel Claiborne. Dr. Claiborne was arrested after a seizure-induced car accident, falsely charged with drunk driving, and taken to jail, where he was kept in a coma for five hours before his wife was notified.² Dr. Claiborne died two weeks later, leaving his family to wonder if he might still be alive if he had received medical care sooner.³

More than four decades later, the Metcalfe Report's warnings to the mayor and City Council about rampant police misconduct, racial profiling, racial slurs, abuse and oppression of poor and minority communities echo yet another panel.⁴ While its report was not commissioned by the mayor, leaving some to question the legitimacy of its findings, the Police Accountability Task Force (PATF) report that was released in April 2016 by a seven member task that was handpicked by Mayor Rahm Emanuel reported findings that are remarkably similar.⁵

A FAILURE OF ACCOUNTABILITY

The PATF was created in response to a video that was released to the public in November 2015 of 17-year-old Laquan McDonald being shot 16 times by a CPD officer as he was walking away from the officer who shot

¹ Steve Bogira, *Two panels on Chicago police misconduct found the same problems 43 years apart*, THE CHICAGO READER, Apr. 20, 2016, <http://www.chicagoreader.com/Bleader/archives/2016/04/20/two-panels-on-chicago-police-misconduct-found-the-same-problems-43-years-apart>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

him.⁶ The video was released nearly thirteen months after the shooting and contradicted the officers' stories, sparking demonstrations and public outcry for those involved to be fired or resign.⁷ After a four-month investigation, in April 2016, the PATF presented a 190-page report to the mayor's office which concluded that "CPD's own data gives validity to the widely held belief the police have no regard for the sanctity of life when it comes to people of color."⁸ Within the report are more than 100 recommendations for the mayor to implement.⁹

Prior to 2007, the Office of Professional Standards (OPS) handled the task of investigating police misconduct complaints.¹⁰ OPS was not independent from the police, but after a series of scandals involving investigations of wrongdoing of CPD officers, Mayor Richard Daley formed IPRA to push back against "the perception" of biased investigations.¹¹ However, investigations by journalists, lawyers, and activists have led to discoveries that seriously call into question whether IPRA is living up to expectations to investigate without bias.¹²

The PATF called Chicago's police accountability system "broken" and "riddled with legal and practical barriers to accountability" and concluded that "IPRA's findings raise troubling concerns about whether it is biased in favor of police officers."¹³ One of those "barriers to accountability" became glaringly obvious in 2015 when Lorenzo Davis, an IPRA supervisor, was fired.¹⁴

⁶ Ken Hare, *Chicago Police Inaccountability*, THE CHICAGO DEFENDER, May 12, 2016, <http://chicagodefender.com/2016/05/12/chicago-police-inaccountability-2/>; see also Margaret Talbot, *Good Cops, Bad Cops*, THE NEW YORKER, Dec. 21, 2015, <http://www.newyorker.com/magazine/2015/12/21/bad-cops-good-cops>.

⁷ Norm Stamper, *Is There Hope for the Chicago Police Department?*, THE NATION, May 13, 2016, <http://www.thenation.com/article/is-there-hope-for-the-chicago-police-department/>; see also Wayne Drash, *The killing of Laquan McDonald: The dashcam video vs. police accounts*, CNN, Dec. 19, 2015, <http://www.cnn.com/2015/12/17/us/laquan-mcdonald-video-records-comparison>.

⁸ *Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve*, POLICE ACCOUNTABILITY TASK FORCE, April 2016, available at https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf

⁹ *Id.*

¹⁰ Chip Mitchell, *City Fires Investigator Who Finds Fault in Shootings*, WBEZ, July 12, 2015, <http://www.wbez.org/news/city-fires-investigator-who-found-cops-fault-shootings-112423>.

¹¹ *Id.*

¹² Margaret Talbot, *Good Cops, Bad Cops*, THE NEW YORKER, Dec. 21, 2015, <http://www.newyorker.com/magazine/2015/12/21/bad-cops-good-cops>.

¹³ *Id.*

¹⁴ Mitchell, *supra* note 10.

Davis was hired in 2008 and had investigated more than a dozen shootings by police at the agency.¹⁵ However, in a 2014 report of the shooting of unarmed teenager Cedrick Chatman, he recommended to his supervisors that Officer Fry, who shot and killed Chatman, be fired. When Mr. Davis's superiors at IPRA ordered him to change his finding, he refused, which led to him being fired.¹⁶ Davis then filed a wrongful termination lawsuit as result, citing instances where his superiors tried to pressure him to change his findings in six cases.¹⁷

Davis, along with the PATF, points to the need to combat the code of silence among police officers.¹⁸ The collective bargaining agreements between the police unions and the City have "essentially turned the code of silence into official policy." The PATF report states that:

The CBAs discourage reporting misconduct by requiring affidavits, prohibiting anonymous complaints and requiring that accused officers be given the complainants name early in the process. Once a complaint is in the system, the CBAs make it easy for officers to lie if they are so inclined — they can wait 24 hours before providing a statement after a shooting, allowing them to confer with other officers, and they can amend statements after viewing video or audio evidence. In many cases, the CBAs also require the City to ignore or even destroy evidence of misconduct after a certain number of years.¹⁹

IMPLEMENTATION, PRESERVATION, AND RIGHT TO LEGAL COUNSEL

Police accountability activists and lawyers have been fighting a legal battle since 2012 to preserve CPD complaint records dating back to 1967.²⁰ In April 2016, an arbitrator working on this dispute issued a "document preservation notice" to the CPD, reversing an order issued three months earlier for the City and police union to set up a timeline to destroy the records.²¹ Two bills are currently being introduced at the state level in 2016, and if these bills pass, it

¹⁵ Mitchell, *supra* note 10.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ In-person interview with Lorenzo Davis, Chicago, Ill. (Apr. 1, 2016).

¹⁹ POLICE ACCOUNTABILITY TASK FORCE, *supra* note 8.

²⁰ Andy Grimm, *Feds' probe of CPD stalls move to destroy misconduct files*, CHICAGO SUN-TIMES, Apr. 29, 2016, <http://chicago.suntimes.com/news/feds-probe-cpd-stalls-destroy-misconduct-files/>

²¹ *Id.*

will render the police union's fight to destroy the records moot because state law would prevent the destruction of such records.²²

The Task Force authors are calling this report the "blueprint for lasting change" on police accountability.²³ However, Mayor Emanuel recently announced the city would initially implement only one-third of the task force recommendations, noting that he wants to wait until the Justice Department finishes its probe before making any major changes.²⁴ Sergio Acosta, a member of the PATF, said the report was designed with the intention that it would not be implemented piecemeal, saying that the recommendations and reforms "are supposed to be viewed holistically," "not one versus another," and "it really is everything as one package that we believe very strongly as a group needs to be implemented."²⁵

One of the report's recommendation is to provide people arrested by CPD with early access to their constitutional right to an attorney after arrest. Currently, even though Chicago has one of the only legal aid organizations in the country that provides free legal aid to anyone arrested by CPD, 24 hours a day, 365 days a year, only .03%, or 3 out of 1000 arrestees take advantage of their right to an attorney. Research has shown that providing arrestees early access to an attorney could save the City of Chicago anywhere from \$12 to \$40 million in reduced costs to the correctional system.²⁶

Eliza Solowiej, executive director of First Defense Legal Aid, the organization that provides the free legal aid mentioned above, said she "was surprised that recommendation wasn't on the list of the Mayor's immediate reforms and that she did not understand the delay because there are reforms that could be implemented at no cost, and are constitutionally mandated."²⁷ She further stated, "The Mayor can do it, the Superintendent can do it, City Council can

²² Adeshina Emanuel, *Lawmakers Push for Chicago Police Accountability with New Legislation in Springfield*, IN THESE TIMES, May 5, 2016, <http://inthesetimes.com/article/19108/lawmakers-push-for-chicago-police-accountability-with-new-legislation-in-sp>.

²³ Charlie Wojciechowski, 'A Day of Reckoning': Task Force on Police Accountability Releases Scathing Report on CPD, NBC CHICAGO, Apr. 13, 2016, <http://www.nbcchicago.com/news/local/Chicago-Task-Force-on-Police-Accountability-Releases-Scathing-Report-on-CPD-375620121.html>.

²⁴ A.D. Quig, Claudia Morell, and Mike Fourcher, *Chicago Government's Resistance to Police Reform*, ALDERTRACK, May 11, 2016, <http://www.aldertrack.com/in-depth/how-chicago-has-avoided-police-reform/>.

²⁵ *Id.*

²⁶ Bryan L. Sykes et. al., *The Fiscal Savings of Accessing the Right to Legal Counsel Within Twenty-Four Hours of Arrest: Chicago and Cook County, 2013*, 5 UC IRVINE L. REV. 813 (2015), available at <http://www.law.uci.edu/lawreview/vol5/no4/Sykes.pdf>

²⁷ *Id.*

do it. There a lot of people involved that don't seem to be working on these low-hanging fruit items."²⁸

SCREENING OFFICERS AND WARNING SIGNS GONE UNNOTICED

The shooting and killing of teenager Laquan McDonald by Chicago officer Jason Van Dyke might have been avoided if the systems in place to flag problem officers had been effective.²⁹ According to records, over 20 complaints have been filed against Officer Van Dyke since 2001—none of which were found to be sustained.³⁰ Some of those complaints were for excessive force: one resulted in a jury verdict of \$350,000 after a jury found that Van Dyke used excessive force during a traffic stop.³¹ Such officers should stand out because the City has an early warning detection system in place.³² However, nearly ninety percent of repeat offenders have not been flagged by this program, which leads critics to believe that the Chicago Police Department does not want to know about its problem officers and wants to shield it from public scrutiny and judicial review.³³

The story of CPD Officer Jerome Finnigan exemplifies the failure of the CPD and IPRA to screen out abusive officers. In his 17-year career, he managed to rack up 68 complaints resulting in zero instances of discipline.³⁴ In 2011, he was sentenced to 12 years in prison for being part of a “rogue group of cops in the department’s elite Special Operations Section who carried out robberies, home invasions and other crimes across the city” and pled guilty to federal charges stemming from a murder for hire plot to kill a fellow officer

²⁸ Quig, Morell, and Fourcher, *supra* note 27

²⁹ *Id.*

³⁰ Steven Rosenfield, *Chicago Cop Accused of Murdering Black Teen Belonged to Culture of Abusive Policing*, ALTERNET, Nov. 25, 2015, <http://www.alternet.org/civil-liberties/chicago-cop-accused-murdering-black-teen-belonged-culture-abusive-policing>.

³¹ *Id.*

³² See Craig B. Futterman, H. Melissa Mather, and Melanie Miles, *The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: The Chicago Police Department's Broken System*, 1 DEPAUL J. FOR SOC. JUST. 251, 255-62 (2008), available at http://chicago.unbound.uchicago.edu/cgi/viewcontent.cgi?article=5096&context=journal_articles; see also Timothy Williams, *Chicago Rarely Penalizes Officers for Complaints, Data Shows*, THE NEW YORK TIMES, Nov. 18, 2015, <http://www.nytimes.com/2015/11/19/us/few-complaints-against-chicago-police-result-in-discipline-data-shows.html>.

³³ *Id.*

³⁴ Steven Rosenfield, *Chicago Cop Accused of Murdering Black Teen Belonged to Culture of Abusive Policing*, ALTERNET, Nov. 25, 2015, <http://www.alternet.org/civil-liberties/chicago-cop-accused-murdering-black-teen-belonged-culture-abusive-policing>.

whom Finnigan believed was cooperating with investigators.³⁵ Finnigan remarked to the judge at sentencing, “My bosses knew what I was doing out there and it went on and on. And this wasn’t the exception to the rule. This was the rule.”³⁶

EARLY TRANSPARENCY EFFORTS

In May 2015, Mayor Emanuel adopted PATF recommendation’s and officially announced the disbandment of IPRA to be replaced by new, transparent Civilian Police Investigative Agency.³⁷ This decision is praised by task force members, but task force member Lori Lightfoot says, “The devil will be in the details. How it will be different (from IPRA) is a fundamentally important question.”³⁸

On June 3, 2016, in an effort to increase transparency and improve trust with the community, IPRA released over 100 incidents of police encounters for the public to view online, consisting of hundreds of videos, audio clips, and police reports for the public to view.³⁹ This decision by Mayor Emanuel and IPRA is consistent with one of the PATF recommendations and will become official policy.⁴⁰ Video will be released to the public within 60 days of an incident anytime the police discharge their firearm, discharge their taser, use force, or when there is an incident in police custody.⁴¹

The Mayor’s adoption of a 60-day video policy has not been without controversy. Police unions, such as the Fraternal Order of Police, have contemplated legal against the City’s new transparency requirements.⁴² Police accountability activists, on the other hand, have argued that videos should be

³⁵ Annie Sweeney, *12 years for Chicago cop at center of scandal: ‘I can hold my head high’*, THE NEW YORK TIMES, Sept. 8, 2011, http://articles.chicagotribune.com/2011-09-08/news/chi-chicago-police-special-operations-section-scandal-jerome-finnigan-federal-court-20110907_1_chi-cago-cop-officer-jerome-finnigan-police-misconduct.

³⁶ *Id.*

³⁷ Merritt Kennedy, *Chicago Mayor Says He Will Disband Much-Criticized Police Oversight Agency*, NPR, May 14, 2016, <http://www.npr.org/sections/therwo-way/2016/05/14/478068423/chicago-mayor-says-he-will-disband-much-criticized-police-oversight-agency>.

³⁸ *Id.*

³⁹ Chip Mitchell and Melba Lara, *City Releases Videos of Police Shootings*, WBEZ, June 3, 2016, <https://www.wbez.org/shows/wbez-news/ipra-released-mounds-of-information-on-incidents-of-police-misconduct-what-stands-out/c4dd0c35-ef25-4cf6-ae58-e788b1948143>. See also <http://portal.iprachicago.org/>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Mitchell and Melba, *supra* note 39.

released sooner than 60 days.⁴³ Whether this “watershed moment” will have a deterrent effect, however, remains to be seen.⁴⁴

CONCLUSION

In Chicago, holding the police accountable is just one part of the solution to criminal justice reform. Reform is possible if all Chicagoans stand together. There is anecdotal evidence to show that the political will and the will of the people are there, and it demands change.⁴⁵ Implementing all of the PATF recommendations and establishing a truly independent civilian police accountability council will help build and foster better relationships between the people and the CPD. It would ensure that the CPD treats people with dignity, fairness, and respect for people’s constitutional and human rights.

In order for meaningful and lasting police accountability reform, Chicagoans must unite at the ballot box and in the streets to insist that their elected officials represent the will of the communities they serve. The PATF lays out this principle in the Executive Summary at the very beginning, stating that above all else, “The police need to know who they work for—the community. The authority that they have belongs to the people.”⁴⁶

⁴³ Mitchell and Melba, *supra* note 39.

⁴⁴ Steve Bogira, *IPRA’s new video archive does little to cut through the fog of Chicago police shootings*, CHICAGO READER, June 8, 2016, <http://www.chicagoreader.com/Bleader/archives/2016/06/08/ipras-new-video-archive-does-little-to-cut-through-the-fog-of-chicago-police-shootings>

⁴⁵ Emanuel, *supra* note 25.

⁴⁶ POLICE ACCOUNTABILITY TASK FORCE, *supra* note 8.