



CRIMINAL JUSTICE TASK FORCE

Addressing Community-Relationship Issues in Policing

Sharon Woo and Tom Meyer

The Bar Association of San Francisco's (BASF) Criminal Justice Task Force began work in April 2015, in the wake of Ferguson-like police and community confrontations, to address shortcomings and the role of race in the criminal justice system. The goal was to approach these issues utilizing skills that are unique to lawyers. The task force is composed of representatives (thirty-two in all) from the San Francisco prosecutor's office, the public defender's office, the criminal defense bar, the bench, law enforcement, the mayor's office, and academia, with early input from Judge LaDoris Cordell (Ret.) and Stanford psychology Associate Professor Jennifer Eberhardt, two preeminent scholars in the field of race in the criminal justice context.

The initial focus for 2015 was threefold: (1) assisting the California state legislature pass a law prohibiting the use of criminal grand juries in cases where it is alleged that the use of excessive force by the police resulted in the death of a citizen (Senate Bill 227); (2) helping establish a data collection system in San Francisco that would serve as a model for tracking and analyzing police-citizen interactions that have racial implications; and (3) making recommendations to address implicit bias in policing.

To address these three areas, the task force members organized themselves into working subcommittees, the Grand Jury Reform Subcommittee, the Data Collection Subcommittee, and the Bias in Policing Subcommittee. To these we later added a Body Camera Subcommittee, on the need for and use of body cameras, and a Civilian Oversight Subcommittee, to address civilian review of complaints against officers.

To date, we have had two notable successes. Functioning as the northern California collaborator to SB 227's southern California backers, the Grand Jury Reform Subcommittee was instrumental in getting the bill through both houses of the legislature during the summer and



signed into law by Governor Jerry Brown in September, taking effect on January 1, 2016. This earned the task force a thoughtful letter of appreciation from the bill's author, State Senator Holly Mitchell of Los Angeles.

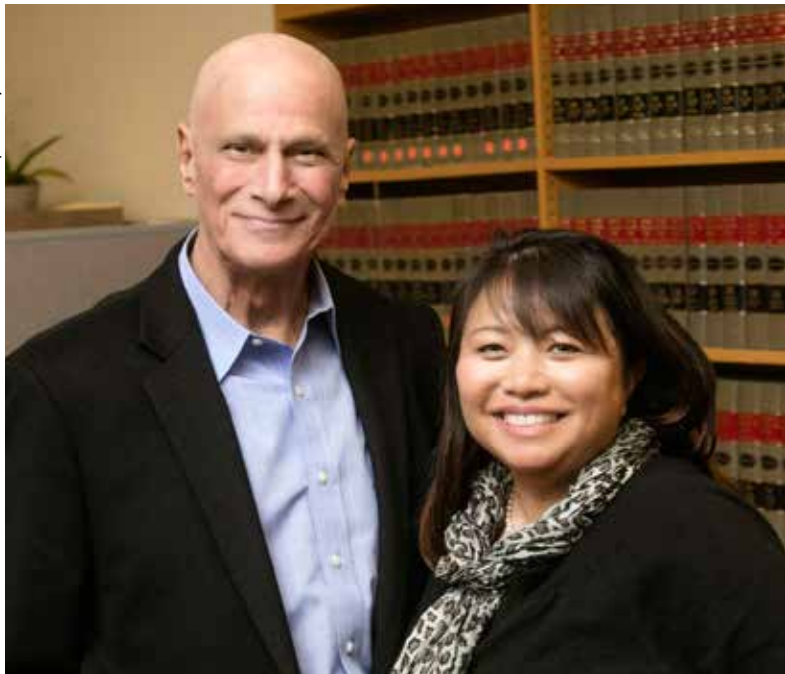
The second success was attributable to the work of the Body Camera Subcommittee, which worked in conjunction with the ACLU of Northern California and the San Francisco Public Defender's Office. The San Francisco Police Commission's initial orientation was that "police should be able to view body camera footage anytime before writing their police report." This was in stark contrast to that of task force members who disapproved of such previewing by the police in instances that resulted in "a shooting, in-custody death, or criminal investigation that involves the officer in question."

A last minute compromise, felt to be a victory by most of the task force membership, includes language that prohibits officers from previewing the video in three specific instances: (1) in an officer-involved shooting or in-custody death, (2) when an officer is the subject of a criminal investigation, and (3) at the discretion of the chief of police.

Looking toward the future, the Data Collection Subcommittee is making considerable strides in summarizing the best practices available prior to reconsidering a protocol that will be an improvement over what San Francisco has been able to accomplish to date.

Another major challenge is faced by the Civilian Oversight Subcommittee, which works on the efficacy of civilian oversight of the police. It is facing a difficult to resolve situation between the police officer's union, which pits its interest in keeping police disciplinary records from public access, over rights of the citizenry under the California Public Records Act. Since the San Francisco Police Officers Association relies on language in a decision of the California Supreme Court, *Copley Press Inc. v. Superior Court of San Diego* (2006) 39 Cal.4th 1272, that it maintains frees them from such

photo by Jim Block



From left, Tom Meyer and Sharon Woo

disclosure obligations, it appears that this impasse is headed for battle in next summer's state legislature.

Finally, the Bias in Policing Subcommittee has been focusing on ongoing training that helps officers become aware of their implicit biases and work to not allow biases to negatively affect their police work. One aspect of bias that the subcommittee has looked at is the role that minimal police hiring requirements might play as a vehicle to achieve a greater number of culturally competent recruits.

Sharon Woo and Tom Meyer are cochairs of BASF's Criminal Justice Task Force. Tom Meyer is a retired defense and civil rights attorney and a national expert on grand juries who has authored textbook chapters and articles on the subject.

Sharon Woo is the chief assistant of the San Francisco District Attorney's Office. She oversees the Operations Department, which includes the Criminal Division, White Collar Crime Division, and District Attorney Investigators Division.



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GRAND JURY

REFORM

SUBCOMMITTEE

SB 227 Passes
with Help from BASF

Tom Meyer and Frank Z. Leidman

photo by Jim Block



Back in March 2015, after the grand juries in Ferguson, Missouri, and Staten Island, New York, did not indict white police officers in the fatal shootings of unarmed black men during confrontations, protests sprouted up nationwide calling for grand jury reform. At issue were the lack of transparency and oversight in grand jury deliberations, which did not involve judges, defense attorneys, or the cross examination of witnesses, but were controlled exclusively by prosecutors who often work closely on a day-to-day basis with the very officers they were called upon to indict.

To address this fundamental flaw in California's grand jury system, State Senator Holly Mitchell of Los Angeles introduced a bill (Senate Bill 227), which prohibited the use of a criminal grand jury in cases involving the fatal use of force by police officers in California. No



sooner had the bill been submitted, than the California District Attorneys Association (CDAА) submitted its unequivocal opposition.

This was the context in which the Grand Jury Reform Subcommittee was formed. As it turned out, the timing could not have been better as far as the prospect of the bill's passage was concerned. Subcommittee members sprang into action just as the bill needed The Bar Association of San Francisco (BASF) and its ability to mobilize its resources effectively to support SB 227.

After receiving approval from the BASF Board of Directors to support SB 227, over the next several months, the subcommittee prepared a pro-SB 227 tool kit that consisted of separate written pieces on, among other matters, the exact wording of SB 227; a list of California legislators, by district, party, and contact information (including the name of the aide in charge of staffing the bill); a synopsis of the arguments in favor of passage of the bill; a proposed op-ed piece designed for the public and nonlawyer legislators; a question and answer preparation sheet on the need for the bill; and copies of letters of support from the Criminal Trial Lawyers Association of Northern California, the California Attorneys for Criminal Justice, and concerned academics and scholars, as well as a copy of the CDAА opposition letter.

These written pieces were eventually followed up by face-to-face meetings in Sacramento with leading California Senate and Assembly members, including each member of the Assembly Public Safety Committee, the Senate Committee on Public Safety, and key legislators in the Senate and Assembly and their aides. Later, the subcommittee worked closely with Senator Holly Mitchell's chief of staff to remain abreast of developments.

In preparation for the floor votes in the Senate and Assembly, the subcommittee contacted bar association officials throughout the state to inform them of upcoming votes

and the need for each of them to reach out to their respective state legislators and let them know how important it was to have their support on this access to justice issue.

After the bill cleared both houses of the legislature, subcommittee members turned their attention to Governor Jerry Brown's staff, making sure that they met with the key advisors, bringing them, particularly those who would be making recommendations to the governor, up to date on the arguments. Governor Brown signed SB 227 into law effective January 1, 2016.

Whether or not there will be a need at some point in the future for an expansion of the crime categories a grand jury is prohibited from considering remains to be seen.

Tom Meyer and Frank Z. Leidman are cochairs of the Grand Jury Reform Subcommittee. Tom Meyer is a retired defense and civil rights attorney and a national expert on grand juries who has authored textbook chapters and articles on the subject.

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BODY CAMERA

SUBCOMMITTEE

Making Recommendations for Body Camera Protocols

Sharon Woo

The Body Camera Subcommittee discussed the potential policies and protocols that should be included in a Body Camera policy for the San Francisco Police Department (SFPD). The subcommittee included Teresa Caffese (private criminal defense), Paul Henderson (San Francisco Mayor's Office), Judge Christopher Hite (San Francisco Superior Court), Erin Katayama (Justice & Diversity Center), Freya Horne (San Francisco Sheriff's Department), Sharon Woo (San Francisco District Attorney's Office), and Judge Laurel Beeler (U.S. Magistrate Judge).

In April 2015, San Francisco Mayor Ed Lee announced that SFPD officers would be equipped with body cameras in 2016. San Francisco Police Commission President Suzy Loftus headed the Police Commission's Working Group on Body Cameras and invited a diverse group to the table to discuss policies and the implementation of a body camera protocol. The Police Commission's Working Group on Body Cameras included members of the SFPD, police officer affinity groups, community members, the ACLU of Northern California, the San Francisco Public Defender's Office, and the Office of Citizen Complaints. Teresa Caffese was The Bar Association of San Francisco (BASF) representative on the Police Commission's Working Group.

While there was consensus on many issues, there were several issues for which divergent positions were taken. The two main issues on which the Criminal Justice Task Force subcommittee focused included (1) whether body cameras should be operating at all times or should the camera be initiated under specific circumstances, and (2) whether officers may review body camera footage prior to authoring police reports.

The Criminal Justice Task Force recommended addressing one particular issue—namely whether officers may review footage prior to authoring reports. Even within the subcommittee there was lively debate. Following a vote, the task force recommended that officers not be allowed to review footage prior to writing a report in two specific circumstances: (1) in any case where there is any use of force by the officer, and (2) when the officer is the subject or any criminal or administrative investigation. Members of the BASF Board of Directors approved sending a letter urging the Police Commission to adopt this position. BASF then held a press conference to announce its position.

On December 2, the Police Commission voted and passed a tentative body camera protocol. The protocol contained language, some of which BASF supported. The passed protocol is that an officer may not review footage in specific circumstances: (1) in an officer involved shooting or in-custody death, (2) when an officer is the subject of a criminal investigation, and (3) at the discretion of the chief of police. This language limits the officer's ability to review footage in certain circumstances, a major point for BASF, as the Police Commission began its discussions by leaning toward "review in all circumstances."

Sharon Woo is the chief assistant of the San Francisco District Attorney's Office. She oversees the Operations Department, which includes the Criminal Division, White Collar Crime Division, and District Attorney Investigators Division.



The Civilian Oversight Subcommittee originally focused on both making recommendations aimed toward developing better connections between the general San Francisco community and the Office of Citizen Complaints (OCC) and improving transparency in the OCC's interactions with citizens who make complaints against San Francisco police officers. As a result of this subcommittee's early work, the OCC has adopted several of the Civilian Oversight Subcommittee's suggestions for improving OCC's website and providing complainants the ability to easily follow the progress of their complaint and to access needed information.

While the subcommittee began with the idea of working at the local level by continuing to make recommendations to the OCC or recommending a citywide audit of the agency, it became apparent to the subcommittee that the issues confronting the OCC and San Francisco citizens could best be addressed statewide with a legislative approach aimed at changing the parameters of civilian oversight to provide greater transparency to the public. The committee has shifted its focus to possible amendments and revisions to the Police Officers Bill of Rights (POBR) and to encourage a different interpretation of the California Supreme Court decision in *Copley Press Inc. v. Superior Court of San Diego* (2006) 39 Cal.4th 1272. Subcommittee members believe this is the best way to develop further transparency regarding civilian complaints and officer discipline and to inspire public confidence in the process.

The subcommittee will be working with grassroots organizations to develop a plan to address reasonable and effective changes to *Copley* and the POBR that balance the privacy of law enforcement officers with the right of citizens to have access to information about their police department. Such changes to create greater transparency are essential to improving relationships between complainants and the OCC and developing trust between San

CIVILIAN
OVERSIGHT
SUBCOMMITTEE

Improving Connections and Transparency When Citizens Make Complaints

Judge Christopher Hite

photo by Jim Block





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Francisco citizens and the San Francisco Police Department (SFPD).

In addition to improving relationships between the community and the OCC, members of the subcommittee in their “day jobs” litigated Supplemental *Pitchess* Motions in the criminal courts in San Francisco to ensure that complaints made against officers were fully disclosed within the bounds of the law. Criminal defense attorneys bring Supplemental *Pitchess* Motions when litigating several types of criminal cases but use them most often in relationship to defending resisting arrest charges. Defense attorneys use Supplemental *Pitchess* Motions to secure information about OCC’s complaints, investigations, findings, and decisions with respect to prior complaints made against the subject police personnel involved in the case. Such disclosure holds officers accountable for their prior actions and shines a light on the work done by OCC that had not been disclosed previously. Favorable rulings on Supplemental

Pitchess Motions are a significant step toward officer accountability and transparency.

In addition to focusing on the SFPD, the Civilian Oversight Subcommittee met with incumbent Sheriff Ross Mirkarimi and candidate for sheriff Vicki Hennessy prior to the election (Hennessy was elected sheriff in 2015) to begin discussions on developing civilian oversight of the San Francisco Sheriff’s Department (SFSD). The subcommittee discussion ranged from improving the current system of oversight in the SFSD, which is completely internal, to the potential of a new citywide oversight agency that would have jurisdiction over SFPD and SFSD.

Judge Christopher Hite was nominated to San Francisco Superior Court by Governor Jerry Brown in December 2015. Before ascending to the bench, Hite was a deputy public defender for the San Francisco Public Defender’s Office.

DATA COLLECTION

SUBCOMMITTEE

Addressing Data and the Driving Forces to Change Police Departments

Julie Traun

The Data Collection Subcommittee includes a deputy chief in the San Francisco Police Department (SFPD), a federal magistrate judge, a senior attorney from the ACLU of Northern California, a community activist, an attorney with the San Francisco Office of Citizen Complaints, and a criminal defense attorney. The members’ considerable expertise stems from both the breadth of their experiences and their apparent differences, yet this subcommittee has become very efficient, with members leaving all their differences at the door, galvanized to learn all there is to learn about twenty-first century policing, data collection, and analysis.

The subcommittee first examined what the SFPD is able to collect electronically and, prior to undertaking any work or offering a single recommendation to SFPD,

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photo by Jim Block



Julie Traun (center), chair of the Data Collection Subcommittee, with, from left, subcommittee members Edwin Lindo and SFPD Deputy Chief Toney Chaplin

consulted extensively with Judge LaDoris Cordell (Ret.), former independent police auditor for the San Jose Police Department, Chief Robert Warshaw, appointed federal monitor for the Oakland Police Department (OPD), and John M. Klofas, a professor of criminal justice and founder and director of the Center for Public Safety Initiatives at the Rochester Institute of Technology. Thereafter, the subcommittee met with three members of the San Jose Police Department. Recently it concluded two meetings with Assistant Chief Paul Figueroa, Deputy Chief Danielle Outlaw, and Sergeant Tam Dinh of the Oakland Police Department.

This subcommittee is far from concluding its work, but clearly, every police department in the country, including San Francisco's, can prioritize data collection. And the timing of this subcommittee's work could not be better, for unlike any other time in history, there is the political will, the

technology, and the academic research to get it right.

It's clear to this subcommittee that a political mandate to gather data means very little without a concomitant plan to analyze the data thoroughly and tie it to risk management and training within police departments. Since Ferguson, departments have reacted either defensively or proactively, but few have been doing this work for as long or with as much professional outside help as OPD. For years, OPD has been working closely with an independent monitor to ensure stop data is utilized in a manner that promotes constitutional and effective policing practices, and the monitor continues to examine search recovery rates and other stop data categories closely. As the subcommittee learned, the stop data is presented and reviewed regularly for all patrol areas at monthly risk management meetings, and from top to bottom the department takes ownership of using, analyzing, and then implementing



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data-driven information. Performance indicators such as use of force, vehicle pursuits, sick leave, and personal digital recording devices (body cameras) are analyzed, and when deficiencies are identified, the captains and lieutenants are responsible for implementing intervention plans. Perhaps most importantly, OPD developed a close yet formal research partnership and technical assistance engagement with Associate Professor Jennifer Eberhardt and Stanford University. Eberhardt and her staff are currently conducting an in-depth analysis of stop data body camera footage using a variety of different benchmarks and variables; the results are anticipated in spring 2016.

While it is politically expedient to implement a plan for data collection/analysis for every police department, this subcommittee believes there are lessons to be learned about the methodology, technology, and analysis tied to

data collection, particularly from OPD. Changing a police culture takes considerable time. Change for its own sake will get us nowhere. Changes that are thoughtful, comprehensive, and designed with the help of those who truly understand twenty-first century policing are likely to be effective; we need to get it right.

This subcommittee will soon have concluded sufficient research to make significant recommendations to the SFPD in 2016.

Julie Traun, chair of the Data Collection Subcommittee, is a criminal defense attorney and the director of BASF's Lawyer Referral and Information Service's Court Program. She can be reached at jtraun@sfbar.org.

BIAS IN POLICING

SUBCOMMITTEE

Making Recommendations to Address Bias in Policing

Kate Chatfield

In 2002, the ACLU of Northern California released a report, *A Department in Denial—The San Francisco Police Department's Failure to Address Racial Profiling*. Although this report addressed only traffic stops and subsequent searches, it painted a disturbing picture of an organization that engaged in racial policing and that refused to address the issue of race in any meaningful way.

In the following decade, we have seen the magnitude of the problem. We have read about racist texts sent by San Francisco police officers. We have seen video of a group of police officers conducting illegal searches in hotel rooms and read their conflicting testimony about these searches. We have read declarations of African American defendants filed in federal court that suggest a persistent level of racial and sexual abuse by members of the San Francisco Police Department (SFPD). We have read of officers shooting the mentally ill and we



have seen video of an African American man with a knife being shot at least fifteen times and killed by officers in the Bayview.

In order to address these serious issues, the Bias in Policing Subcommittee first spent months researching the solutions offered in consent decrees, settlement agreements, the U.S. President's Task Force on 21st Century Policing, and other research studies and reports issued by both governmental agencies and independent researchers. Subcommittee members also met with SFPD Chief Greg Suhr and discussed many ideas intended to address the issue of bias in policing.

The subcommittee worked on a list of draft recommendations related to (1) officer training, including training on ways to understand and limit the impact of subconscious associations and perceptions that compromise the ability to accurately and safely assess individuals, situations, and the threats that they present; (2) updating the policy and practices of police officers regarding use of force and reporting requirements related to the use of force; (3) transparency in disciplinary proceedings; and (4) employment and recruitment reform.

As with the Civilian Oversight Subcommittee, the Bias in Policing Subcommittee has begun to shift its focus to a statewide approach to curtailing abuses by police officers in our community. At the same time, we will continue to work with various organizations, including representatives of SFPD, to reach solutions to particular policing problems in San Francisco.

Kate L. Chatfield is a partner with the Law Office of Chatfield and Reisman. She represents clients facing criminal accusations in state and federal court. She worked with the poor and homeless for many years, cofounding a homeless shelter, dining room, and supportive housing program in San Bruno. She can be reached at katechatfield@gmail.com.

photo by Jim Block



Kate Chatfield

TONY CHAPLIN NAMED DEPUTY CHIEF TO LEAD NEW BUREAU WITHIN SFPD

In the wake of Ferguson, San Francisco Police Department's (SFPD) racist texting, the death of Mario Woods, and the recent announcement of the Department of Justice's two-year comprehensive review of SFPD's policies and procedures, on February 13, 2016, BASF Criminal Justice Task Force member Commander Toney Chaplin was promoted to deputy chief and will lead Professional Standards and Principled Policing, a new bureau in SFPD. This historical development is significant, because since the formation of the Department of Homeland Security after September 11, 2001, no bureaus have been created. Chaplin's bureau will work directly with the Department of Justice (DOJ) in an effort to be proactive, rather than reactive to the DOJ's recommendations. Chaplin and Chief Greg Suhr believe changes should be initiated immediately and on an ongoing basis; waiting for final DOJ recommendations is not an option. The bureau will include the following units: behavioral science, hostage negotiation, bulletins and directives, and community youth and engagement.

Deputy Chief Chaplin is a twenty-six-year veteran of SFPD. Community engagement is not new to Chaplin; he explains he's always served communities of color and was one of the originators of TNT (Taraval Neighborhood Team), a group of police officers who developed a program to engage youth in the Oceanview neighborhood. The officers found that mentoring, along with fishing and camping trips, did more to curtail violent crime than prior police efforts that focused exclusively on law enforcement. Chaplin has since served in narcotics, gangs, and as a lieutenant with Northern Station and the homicide division. He was named commander of investigations one year ago, and part of his work included a very active role



Deputy Chief Toney Chaplin

on BASF's Criminal Justice Task Force. His commitment to and involvement with the data collection and analysis work has been essential to the work of the task force as a whole. He explains that his work with the task force "has been life altering and career defining. This task force comprises a wide array of talent; in one room and over a short time period the forward-thinking and fast-moving work has made for a fantastic experience." He will continue and expand on his work with the task force, knowing that the thoughtful and thorough work of this diverse group will play a very important role in criminal justice reform and the direction of the new bureau.

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