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Commissioners:

The most important questions that should be publicly answered as you start to pursue Mayor Breed's promise to improve the Early Intervention System (EIS) are:

- Why will *you* succeed when so many well-intentioned, smart, diligent people before you have failed?
- What specifically will you do *differently* to ensure the commitments being made about EIS -- yet again -- are actually fulfilled this time? My idea is at the end of this email but maybe you have a better one.
- We're now on our *third mayor* over a 14-year time span who has promised to fix and strengthen SFPD's EIS. *Seven SFPD police chiefs and countless police commissioners before you* have allowed a variety of important, clear obligations in your EIS DGOs -- the current one and the prior version of 3.19 -- to be ignored year after year. *What specifically will you do to actually hold yourselves and the SFPD command staff accountable to EIS obligations and promises in ways your predecessors have not?*

The 4th Quarter 2019 EIS data shows -- as the EIS data has shown for years now -- that the *SFPD knows exactly who the outlier officers are who use force far more frequently than their peers. They know where they work and under whose direct supervision.* The latest data shows that *40 specific officers* working in just three stations (Mission, Central and Tenderloin) each reported using force at least three times each over just a three-month period at the end of last year. (https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/PoliceCommission070820-4thQ2019EIS_Report.pdf - pg. 23). But, consistent with USDOJ COPS' 2016 conclusions that SFPD's EIS produces "*little action*" and is *not* an "organizational priority," these (and other EIS flagged) officers' supervisors, the EIS Unit and the larger management structure of the SFPD that's responsible for EIS initiated *only one formal intervention* for any SFPD member for the entire year. Why is that? *If that's not the SFPD's very reform-resistant internal culture at work, what is it?*

The 4th Quarter 2019 EIS data shows that since drawing and pointing a firearm finally became a reportable use of force in 2016, over time this duty to report resulted in sharp declines in the alarmingly high frequency SFPD officers had been pointing their guns at people. Assuming this reflects an actual change in conduct rather than declining compliance with the reporting duty, it's good but not at all surprising news that this reform would have the same impact in SFPD that it had in the many law enforcement agencies who imposed this duty far earlier. But, putting aside this quite predictable effect on that particular problem, *the data shows (at pgs. 48-49) that all other forms of force used on members of the public (per other data, very disproportionately on African Americans) has, in fact, "remained constant" and not significantly decreased (only 2.7%) since the damning use of force findings in the 2016 USDOJ COPS report.* Why is that? Could it be that generations of SFPD officers have been taught that using force far more frequently than others has never really been a priority concern for the organization... that after at least 10 years of this sort of EIS data leading only to rare or inadequate EIS action even with the most severe "use of force" outliers, *the change-resistant internal culture of the SFPD has in all practical respects won the day on this issue... and that, as always, the reform rhetoric from City and SFPD officials is of far less significance than the reform inaction that nearly always follows?*

(*And now that you know that use of force overall is not really down at all once you put aside the drawing of firearms data playing out exactly as expected, will you please be fully transparent and frank with the public about the actually paltry overall results thus far of SFPD's use of force reforms?* It is great that fatal police shootings -- the horrible series of clearly avoidable deaths that plagued the City in 2015 and 2016 in particular -- are down for now. But can we please stop pretending that four years after the USDOJ COPS report there's been any significant impact on other, far more frequent, uses of force? "*Transparency is a huge step towards accountability*" -- SFPD Chief William Scott, joint interview with DA Chesa Boudin at Manny's, June 17, 2020. I agree. And the *absence* of complete transparency can turn serious reform efforts into mere public relations exercises that will have no credibility with the public and even less lasting impact on a change-resistant internal police culture.)

PROMISES, PROMISES

On June 11th, Mayor Breed announced a "Roadmap for New Police Reform" which included a pledge to "strengthen the SFPD's Early Intervention System" as part of her plan to "Address Police Bias and Strengthen Accountability." (<https://sfmayor.org/article/mayor-london-breed-announces-roadmap-new-police-reforms>). That sounds pretty good until you realize that *Mayor Lee made the exact same pledge four years ago... just like Mayor Newsom did ten years prior to that.* Mayor Ed Lee's February 22, 2016 press release was headlined "Mayor Lee Announces Comprehensive Police Department Reforms" and touted a joint letter from Chief Greg Suhr and Police Commission President Suzy Loftus promising to "expand the Early Intervention System (EIS) to identify and intervene immediately when an officer develops behaviors which are indicators

of questionable practices." (<https://sfmayor.org/article/mayor-lee-announces-comprehensive-police-department-reforms> and <https://sfmayor.org/sites/default/files/FileCenter/Documents/484-Subr%20%20Loftus%20Letter1.pdf> .) Reacting to a *San Francisco Chronicle* series documenting the SFPD's abject failure to deal with problem officers, Mayor Gavin Newsom promised in early 2006 that a computerized EIS would be fully operational by the end of that year --

****** Mayor Gavin Newsom says he will "run roughshod" over the San Francisco Police Department to create, by the end of the year, a computerized tracking system capable of identifying problem officers....**

He said he was particularly troubled by data showing that in recent years blacks have constituted typically more than 40 percent of the cases in which force was used on suspects.

Newsom stated, "I am going to run roughshod over the department to make sure" that a computerized database is established....

The Chronicle reported that about 5 percent of the department's 2,220 officers use considerably more force than their peers who work the same streets. The newspaper investigation showed that without a computerized tracking system, the department is incapable of getting a rapid, complete look at these problem officers....

The newspaper's finding of disproportionate use of force on blacks mirrored statistics contained in the department's own studies of incidents involving force....

The mayor also referred to The Chronicle's report that some officers with troubled records were being promoted to supervisory positions or being picked to train the department's rookie officers in their first weeks on the streets.

"It is in the best interest of the department in terms of public confidence and a kind of respect we are hoping to build again that if people are doing things wrong, that they are held to account and there is a procedure of promotion that doesn't allow people to continue to advance and oversee and train others when they have had a series of substantiated incidents" in their records, Newsom said....

Newsom said he wants the new system to track about a dozen indicators. The Police Officers Association has expressed resistance to some of them.

Within the Police Department, once the new tracking system is up and running, Newsom said, "then *we really have to hold ourselves to account to use that information and not allow things to slip through the cracks....* (W)e need to be sure to track those individuals, and we need to make sure those entering the force understand they are held to a certain standard of conduct...."

Newsom also asked to be given "a chance not to be part of the problem. I have the opportunity to be part of the solution, and I am now going to hold myself to account and the police chief and the Police Commission and the Office of Citizen Complaints and the POA, the rank-and-file and the community -- all working together and not pointing fingers." ****

(<https://www.sfgate.com/news/article/THE-USE-OF-FORCE-Mayor-demands-accountability-2504249.php> .)

That was fourteen years ago! So why does it sound so hauntingly and tragically familiar? If you don't have a plausible working theory about the nature of the problem with the SFPD's failure to fully implement and use EIS as it was always intended and as your DGOs have always required -- and an effective way of addressing that problem -- you have little hope of finally delivering on the promises that Mayor Breed and her two predecessors have all made about EIS.

I'm tempted to say -- fool us once, shame on you. Fool us twice, shame on us. Fool us yet again....and what exactly? (Completely or massively defund SFPD?) But I don't actually believe any particular mayor, chief, police commissioner or any particular member of SFPD's command staff was insincere at the times they've all made various pledges to finally address very long-standing EIS issues. I don't think they were actively trying to fool anyone before. I assume Mayor Breed isn't trying to fool us now. But the current Police Commission will be fooling *itself* if it believes it can be the ones who -- unlike all your predecessors -- just magically fix EIS without truly grappling with the deeper, underlying reasons for why it's never been an SFPD priority in the first place. You can't realistically expect to get where you want to go now, if you don't pause to consider how you got here. Believe it or not, here's the short version. Spoiler alert -- it ain't pretty.

1994

The Police Commission adopted the first version of DGO 3.19 creating what was then called the Early Warning System. I worked on the details of it with then-Chief Tony Ribera and members of his command staff. The Commission heard the SFPOA's opposition to the new program but, in the end, decided to vote in favor of the system backed by Chief Ribera, the ACLU, and other community voices. I was perhaps old enough to know better by then but I naively hoped that, notwithstanding SFPOA resistance, the terms of the Commission's DGO would actually be followed and the system would be implemented.

After all, these systems were already (26 years ago!) starting to emerge as a promising best practice in the field, Chief Ribera was devoted to modernizing police management practices -- (a passion he continued to pursue in his post-SFPD years as Director and now Director Emeritus at USF's International Institute of Criminal Justice Leadership) -- and he had the backing of Mayor (and former SFPD Chief) Frank Jordan and the mayoral-appointed Police Commission. But that hope on my part was, in

retrospect, embarrassingly naive.

As the Police Executives Research Forum's (PERF) 2008 comprehensive *Organizational Assessment of the SFPD* -- the precursor to the similarly-detailed reform plan in the 2016 USDOJ COPS report -- summarized later --

***"In 1994, the San Francisco Police Department initiated an Early Warning System (EWS) to identify and address performance issues or behaviors of employees that, if continued, could potentially lead to disciplinary action. In retrospect, **although the EWS was progressive for its time**, the system was narrow and limited in that it considered only two criteria -- incidents of use of force, and complaints submitted to the Office of Citizen Complaints. Supervisors were expected to look for patterns of behavior by officers under their command and to take appropriate action to prevent the deeds from becoming disciplinary matters. According to some in the department, **few supervisors identified behavior patterns; and initiation of action to change officers' behavior was rare. Moreover, the EWS was not supported by the Police Officers Association (POA)**. It was perceived as another way to initiate discipline against officers, rather than as a positive tool to identify members of the department who could benefit from one of many sources of available assistance."

(https://www.sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14694-San_Francisco_Organizational_Review_Final_Report.pdf , pg 270.)

2003

In a *Roadmap for Reform* report on a variety of scandals and problems in SFPD, the ACLU concluded SFPD's original DGO 3.19 had fallen behind current best practices for an early intervention system. Noting that the officer whose conduct triggered the far flung "fajitagate" scandal had used force 16 times in only 13 months and yet had apparently received no intervention, ACLU called for an automated and significantly upgraded and improved system tracking a variety of factors that were, by then, common in the field. (<https://www.aclunc.org/sites/default/files/Roadmap%20to%20reform%20-%20SFPD.pdf> - pg. 13 and <https://www.sfchronicle.com/politics/article/ACLU-proposes-reforms-for-SFPD-Street-brawl-a-2663221.php> .) Two months later, the San Francisco Controller issued a "Best Practices Review" report echoing the ACLU's conclusions and detailing -- after a careful review of the systems already in place (17 years ago!) in other jurisdictions and expert recommendations from groups like the National Organization of Black Law Enforcement Executives (NOBLE) and USDOJ's Civil Rights Division and National Institute of Justice -- the specific ways the 1994 SFPD system was now dangerously outdated. (https://sfcontroller.org/ftp/uploadedfiles/controller/Best_Practices_Report-Final_rev.pdf , pg. 8 - 12.) Neither report generated sufficient urgency to motivate the Police Commission or SFPD to act quickly to address those already quite obvious shortcomings.

2006-2007

After yet another series of misconduct scandals and a *San Francisco Chronicle's* investigative reporting series that used readily available public records to identify 100 officers who were somehow left to rack up full a quarter of the SFPD's overall uses of force, Mayor Newsom finally promised to "run roughshod" over SFPD to make sure an effective, computerized EIS was in place by the end of 2006 --

**** "The Chronicle's findings came from a computer database the newspaper created by entering 8,601 police use-of-force reports it obtained from the department. The database gave the newspaper a quick, comprehensive picture of individual officers' force records.

This is an overview the department does not yet have because of its failure to create a computerized tracking system, but Newsom said Friday he has put \$800,000 in the 2006-07 budget for this purpose....

Newsom said, "With \$5 million in settlements, don't let anyone tell you we can't afford a computer system. Think of what settlements we could have avoided if we had this technology in advance. Money is not an appropriate excuse. **Money is not the reason we haven't put the system in place. It's political will.** You are right about that. We could have done it."

(<https://www.sfgate.com/news/article/THE-USE-OF-FORCE-Mayor-demands-accountability-2504249.php> .)

But, Mayor Newsom's determination could not overcome the internal SFPD cultural resistance to the very idea that using force far more frequently than similarly-situated officers, generating more complaints or lawsuits or making lots of inherently suspicious arrests were things that should actually be tracked and considered signs of a possible problems worthy of attention and possible intervention. First, the SFPOA immediately blasted Mayor Newsom for even "acknowledging there's a problem when there isn't a problem." (<https://www.sfchronicle.com/politics/article/Police-union-president-takes-Newsom-to-task-2504574.php> .) Then, two months later, the SFPD's first draft for the system fell well short of best practices already in place in several other major American cities prompting a nationally-recognized police accountability expert to comment "it lacks the teeth necessary to responsibly manage the risk of police misconduct" and "it seems that SFPD still somewhat has its head in the sand." (<https://www.sfchronicle.com/news/article/S-F-plan-to-track-police-criticized-System-2520015.php>)

Six months later, it was clear the Mayor's threat to "run roughshod" would not get the new EIS approved and running by the end of the year.

*** *"The Police Department has been saying it has been working tirelessly on this system for years, but so far it hasn't*

happened," said Commissioner Joe Veronese....

Law enforcement experts view a computerized tracking system -- which can offer an up-to-date, comprehensive look at an officer's record with a few keystrokes -- as a crucial move that other cities already have embraced.

Police practices experts also say, however, that departments that want to improve officer performance and identify those who need counseling must go beyond that computerization step and change the way they manage officers on the streets....

More than two decades ago, law enforcement agencies began building systems capable of identifying officers with problematic performance, especially excessive use of force.

Departments used a variety of methods to intervene, including counseling and retraining, with the goal of dealing with an officer's problems before discipline became necessary.

The trend toward tracking systems was fueled by a growing awareness that *a relatively small group of officers in each agency is typically responsible for a disproportionate amount of the force used on citizens.*

The thinking was that if those officers could be identified, counseled, retrained or removed from the street, departments could reduce the use of unnecessary force, citizen complaints and costly lawsuits....

In 1997, Pittsburgh entered into a consent decree with the Justice Department to improve its tracking of officer performance and to take other modernizing steps. Today, it has a comprehensive early intervention system: It requires sergeants to log onto the computer every day and monitor their officers' behavior.

Samuel Walker, one of the nation's top experts on police tracking systems, emphasized that *management in a department has to be totally committed to making a system work.* "Somebody has to make these things happen," Walker said. "If no one really takes the lead, these reforms won't happen, and unprofessional conduct will continue...."

(C)ity leaders historically have not pushed hard for police reform.

Major reform would be difficult to achieve, said John Kecker, a prominent defense attorney who served as Police Commission president under Mayors Art Agnos and Willie Brown....

Without a major scandal, *Kecker said, very little can change because no mayor or police chief wants to tangle with the Police Officers Association, which "to some extent runs the department. So nothing happens."*

(<https://www.sfchronicle.com/news/article/S-F-police-conduct-plan-behind-schedule-2487276.php>)

Finally, EIS version 2.0 -- the DGO 3.19 still in place and that, until it is amended or updated, still binds SFPD -- was approved in February 2007:

*** *"This system is an essential innovation that will allow the department to proactively identify any issues that arise,"* said the mayor, who successfully lobbied to set aside more than \$1 million in the 2006-07 city budget for the system's startup costs.

Department officials say they expect the program, known as the Early Intervention System, to be fully operational by the end of the year.

It wasn't.

*** Before the vote, *several commissioners mentioned how long it had taken to bring the general order to a final vote. Commissioner Theresa Sparks said that during her three years on the commission, she has heard repeatedly that the system would be implemented soon.*

"We need to do whatever we can to get whatever resources we need. This has been going on for too long," she said.

(<https://www.sfchronicle.com/news/article/Plan-OKd-to-track-S-F-police-Computer-system-2616107.php>)

You read that right. Police Commissioners were openly complaining *thirteen years ago* -- well before two subsequent mayors also promised EIS reform -- that SFPD was dragging its heels in implementing the sort of tracking system many other major police departments already had and were putting to good use.

2008

Yet, almost two full years after DGO 3.19 had been approved, PERF concluded that, while on paper EIS was now sound and comparable with best practices in the field, it was still not being fully implemented. (Mayor Newsom spent \$400,000 on the PERF study hoping it would shake SFPD management out of a variety of its slothful, insular, far-behind-the-times management practices. He was proven to be as naive as I'd been 14 years prior.) PERF's primary recommendation in December 2008 in this

area was simply *"the department should take steps to promptly implement the EIS System"*... which, of course, they'd already promised to do and were obligated to do by the Commission's DGO 3.19. More specifically, they recommended that SFPD actually track *all* the associated factors (like resisting arrest charges or incidents of the DA dismissing a case based on documented concerns about the officer's conduct) as required by the DGO, actually fill the vacant sergeant's position in the EIS Unit (!), undertake a "train the trainers" effort for all sergeants and post EIS FAQs on the SFPD intranet to demystify EIS and better incorporate it into the day-to-day management culture of the department.

(https://www.sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14694-San_Francisco_Organizational_Review_Final_Report.pdf , pg. 270-277.)

2013

Meanwhile, the law enforcement profession as a whole continued to speed far ahead of SFPD's weak EIS efforts. In 2013, PERF published an important report that every big city chief should've taken to heart titled *Civil Rights Investigations: Lessons Learned*. The chapter on "The Issues that Most Often Result in Justice Department Investigations" featured a section on the need to have a modern, comprehensive, fully functioning, well-supported early intervention system. Among the then-standard features they emphasized -- *"The system must be maintained and used by supervisors and managers.... Interventions by supervisors must be implemented in a timely manner...."*

Intervention progress must be reviewed by a supervisor."

(https://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf , pgs. 16-19.) I don't know if SFPD management was paying attention to PERF's important work then but, if so as later developments would prove, they ignored these recommendations.

2015

DGO 3.19 assigns an unusual number of very specific responsibilities to various specific SFPD members of the command staff. That highly unusual level of detail in the DGO was necessitated by the SFPD's failure to follow the much more simple predecessor version of the Commission's policy for the thirteen years it was in effect from 1994 - 2007. One of the specific requirements was.. and is.. that the internal EIS Board charged with, among other things, overseeing the system, identifying any unmet needs and making recommendations for improvement to the Commission must meet on a quarterly basis. (DGO 3.19, section V.) Mario Woods was killed in December. I subsequently learned *the EIS Board had not held a single meeting in 2015*.

2016

With the death of Mario Woods finally making police reform a local priority (again), Mayor Lee, Commission President Loftus and Chief Suhr -- without acknowledging any of the above, much less Mayor Newsom's and prior police commissioners' frustrating experiences with this issue -- promised action in February of that year on EIS and the EIS Board meetings again started to take place. I attended some of those meetings and provided a number of detailed EIS recommendations to the SFPD... to the DPA... to several police commissioners... and to my former SFPD reform colleague Mayor Ed Lee (with whom I'd often worked on SFPD issues during his Asian Law Caucus days).

In October, the USDOJ COPS report's section on EIS stated bluntly --

"EIS needs to be an organizational priority. Its goal should be *more than tracking employee actions and generating supervisory reports. The philosophical goals of EIS are identifying at-risk employees and interceding to improve overall performance.* Pursuant to DGO 3.19, the EIS Board has responsibility for review of aggregate information, but *assessment team members observed little action based upon data analysis during the assessment.... At present, the SFPD does not have a cohesive organizational approach to EIS.*"

More specifically --

"Overall, the structure and philosophy of early intervention system in the SFPD are consistent with national police practices. Moreover, the team found the intent for the EIS program—providing “non-disciplinary intervention, whenever possible, to assist our members in their professional development in order to provide the highest level of service and satisfaction to the public”—to be appropriate and consistent with best practices. The SFPD faces challenges, however, in implementation of the program. Technology was a significant barrier to organizational development and reach."

In other words, the very same problem Mayor Newsom had pledged -- and, in fact allocated considerable resources -- to fix ten years prior, had *still* not been addressed by the time USDOJ COPS showed up to conduct yet another study and produce yet another report full of reform recommendations for SFPD.

"For the period January 1, 2013, through December 31, 2015, out of the total population only 19 employees were recommended for EIS monitoring. The data reveal that 17 out of the 19 EIS indicator events were closed within the month they were initiated.... This is concerning to the team because *it does not appear to support an active and robust EIS program if no one is engaged in it* and action is ended in the same month that the EIS alert is initiated."

(USDOJ COPS 2016 report on SFPD, pgs. 121 - 130 -- http://sfpd.prod.acquia-sites.com/sites/default/files/2018-11/DOJ_COPS%20CRL_SFPD%20OCT%202016%20Assessment.pdf .)

2019

Three years later, the "little action" by EIS found by USDOJ had become *even less action*. SFPD's EIS resulted in the initiation of only one formal intervention for the entire calendar year.

2020

With the death of George Floyd suddenly making police reform a local priority (again), Mayor Breed promised action on EIS as part of her "Roadmap for New Police Reforms." Three days later, joining with their police union colleagues from San Jose and Los Angeles, the SFPOA ran expensive full page ads in the Sunday editions of the *San Francisco Chronicle*, *San Jose Mercury News*, *Los Angeles Times*, and *Washington Post* calling for "action" in the wake of the police murder of George Floyd beginning with the adoption of early warning systems "modelled" on the SFPD's system (!). *The reality is that the EIS the SFPOA wants is the one they currently have...* the one the change-resistant SFPD culture has produced for them... the one they can tout for public relations purposes as they try to fend off defunding threats and other more aggressive reforms that might actually provide real transparency and accountability over the actions of their members... *not* an EIS that is actually a significant organizational priority... that is in full compliance with the mandates of DGO 3.19... that is effective and fully incorporated into the management practices of SFPD.

LESSONS LEARNED OR HEADS STILL "IN THE SAND"?

So what does all this mean? It means an entire generation of African American children born and raised in San Francisco -- including my own -- have now grown deep into adulthood during the 26 years a series of local public officials have been making and (unintentionally) breaking promises about SFPD's EIS. They know -- (as I know and anyone who's paying even a little attention also knows) -- that *during this same time period San Francisco has been plagued by extreme racial disparities in nearly all aspects of its policing* from uses of force to who gets subjected to (allegedly) consensual searches to whose neighborhoods are policed differently, and on and on. It means the SFPD has data -- and has had it for a very long time -- that tells them exactly which officers... working under which supervisors... working out of which stations and assignments... are the extreme outliers in how frequently they use force, are named in complaints, get sued, or are flagged by other EIS indicators. And, notwithstanding your predecessors' best efforts to the contrary, *the SFPD has consistently failed to fully use that data to formally intervene with those officers to at least send the message* that their behavior patterns *are* noticed... that these patterns may indicate behaviors inconsistent with organizational and civic values... that since their similarly-situated peers are *not* exhibiting the same behavior patterns the behaviors themselves *are* avoidable... and, that the SFPD as an organization and the City as a whole actually *prefers* they use force less frequently, rack up fewer complaints, and generate fewer lawsuits. *Who besides SFPOA would think that would be a controversial message to consistently send and reinforce both internally and to the public?*

And, by *not* making full use of this EIS data after all this time... and all those studies and recommendations... and all those promises... *the SFPD is telling its officers that, in the end, they really don't care very much about those pesky racial disparities, about changing the behaviors, about rebuilding trust based on concrete actions rather than pretending more empty promises will do the trick, and about truly confronting the internal cultural issues that are at the heart of all of this.* SFPD members are not stupid. Nor is the public. They both recognize actions (or in this case consistent inaction) speak far more loudly than words. And, by persistently ignoring all of the most significant EIS recommendations over the years, SFPD is also sending that very same, deeply corrosive message to my adult daughters and to each and every member of the public -- namely that *SFPD is aware of those racial disparities but just doesn't care enough about them to actually use the EIS to combat them.* And, *that* is positively infuriating to me as a father, a long-time member of this community and a local taxpayer. It's completely unacceptable to me because I *know* that many large American law enforcement agencies -- probably most of them at this point -- have more fully implemented and integrated modern early intervention systems into their organizational cultures for many years now. I hope it's unacceptable to you too. If other cities are already doing it, why not San Francisco?

I'm convinced that because the SFPD's internal, reform-resistant culture has proven to be so durable, even the most extreme racial disparities have become normalized and that the behavior patterns revealed by the EIS data are simply not viewed as a problem within the department. That doesn't mean any or all SFPD members charged with EIS responsibilities are "bad" people and actively trying to undermine EIS. It just means *they're operating in a culture that has blinded them to the significance of what the EIS data is telling them.* When Mayor Newsom promised to run "roughshod" to fix the broken EIS 14 years ago, the SFPOA complained it was wrong of him to "acknowledge a problem that is not problem." That's how the SFPOA feels about EIS to this very day -- that outlier levels of uses of force, complaints or lawsuits shouldn't trigger interventions because those things are not really "problems" at all -- not to SFPOA and seemingly not to most of SFPD's middle and higher level management. I agree with former Commission President John Kecker when he was quoted saying the SFPOA "to some extent runs the department so nothing happens." They certainly promote and protect the change-resistant culture of the department that has thwarted the potential of EIS for all these years.

This cultural blindness is most evident in the excuses that are *still* being offered for the lack of full EIS implementation. As Mayor Newsom said, "money is not the real reason we have not put the system in place. It's political will." I'm agnostic on the current question of whether to purchase a new "data-driven" system because, absent some enforcement mechanism (see below), I have no faith anymore that SFPD will actually do effective and appropriate interventions regardless of the system used to identify its outlier officers. But it *is* very telling that -- after all the money spent on the current system and on the PERF study telling the SFPD to, in effect, "just use it" and after the USDOJ COPS finding that the problem is fundamentally the failure of SFPD to even make EIS a priority -- the SFPD's power point presentation on this topic wonders if spending a million dollars on a

new system might be too "expensive." (Pg. 22.) That amount represents less than *two-tenths of one percent* of the overall SFPD annual budget. By my count, the current SFPD organization chart includes 46 positions for sworn members above the rank of lieutenant. The SFPD could pay for the start-up costs for that new EIS system by doing without the pay and benefit packages for just three or four of those upper management positions for one year. The million dollars for a new system could be paid for with the pay and benefits savings from doing without just seven or eight rookie Q-2 officers for one year. SFPD can find the money to pay for its massively-expanded command staff and other personnel costs but it's wondering if it should use what amounts to, relatively speaking, pocket change in their enormous annual budget for a system that might better spot and prevent possible patterns of problematic behavior? *It's not the system. It's the culture.*

Do you disagree? If so, what do *you* see as the likely source of the very long-standing problems with EIS and what do *you* propose to do about it?

CONSEQUENCES OF INACTION

There are many examples of how the SFPD's failure to fully implement and use EIS per your DGO 3.19 orders is likely adversely impacting policing in San Francisco. Here are just two --

First, since DGO 3.19 was revised and allegedly made a priority in 2007, SFPD has been beset by too many controversies and scandals to count. In the meantime, *the number of formal interventions have gone from very few* (per USDOJ COPS) *to even fewer*. As best I understand it, SFPD's position is that the extreme rarity of formal interventions for EIS-flagged outlier officers is more indicative of possible flaws in the system itself rather than in the internal culture of the SFPD that tends to be skeptical of the very idea that too many uses of force, complaints or lawsuits might be a serious indicator of possibly problematic behavior. There's an easy way to test their theory. I've repeatedly suggested it before. Identify 20 or 30 officers who over the last 10 years engaged in misconduct that all would now agree was unacceptable. You don't have to release their names. I'll help you make a list. How about the sergeant and his colleagues who were convicted of federal crimes exposed by Public Defender Jeff Adachi (earning him the eternal ire of the SFPOA)? Or the officers found to have exchanged racist, homophobic, and misogynistic text messages that SFPOA spent hundreds of thousands of dollars of their members' dues in a legal fight to keep on the force for as long as possible? The officers accused in open court by judges of having perjured themselves? The officers who were found to have engaged in official misconduct in the deaths of Luis Gongora Pat and Jessica Williams? The officer who tried to rob a bank? The officers who a federal judge found there was credible evidence to conclude had targeted people for arrest by race and triggered a lawsuit costing taxpayers more than \$200,000 in a settlement? Other officers whose conduct led to significant settlements and awards? In the years prior to each of these events, *how many of the involved officers had already been flagged by the EIS system? Of those who were flagged by EIS, how many actually received formal interventions?* Because if several of these particular officers *were* flagged by EIS and yet did not receive formal interventions, that would very strongly suggest the problem is in the management culture of the SFPD that caused underreactions to the warning signals the system was sending... rather than entirely in the design of the system itself. Don't you want to know that? *We'll never know if a fully functioning, high priority EIS system would have averted most or even any of these tragic and scandalous incidents over the last decade. But we do know that if EIS continues to be a low organizational priority and rarely results in formal interventions, it's unlikely to deter or possibly prevent officers from engaging in otherwise avoidable misconduct over the next decade.*

Second, DGO 3.19 requires a review (Section II.C.) of all the listed "associated factors" of officer behavior (III.B.), every time the system issues an alert based on the primary indicators (III.A.). Two-years after the DGO was adopted, PERF found that some of the most important associated factors were not being tracked and recommended the problem be immediately addressed. Even though the SFPD's EIS materials (quarterly report and power point) still list all the associated factors required by the DGO, they were still not actually tracking on some of the most important ones four years ago... and I'm told they are still not doing so today.

For example, arrests for Penal Code Section 148 (resisting/obstructing officers) are *required* to be tracked by SFPD's EIS -- just like they are by most similar systems mandated by the USDOJ Civil Rights Division (like in Ferguson, for example) -- because those arrests are often either indicative of retaliatory "contempt of cop" false arrests or of officers who, for whatever reason (demeanor, attitude, lack of verbal de-escalation skills, etc.), have more difficulty gaining voluntary compliance from people than their peers. This has been a very well-documented and widely-recognized problem in law enforcement for many years now. Former USDOJ Civil Rights Division Deputy Director and current head of Georgetown University's Innovative Policing Program, Christy Lopez, described the phenomenon quite well in her 2010 report, *Disorderly (mis)Conduct: The Problem with Contempt of Cop Arrests*, citing examples from San Francisco and several other jurisdictions --

"Inappropriate contempt of cop and cover arrests, and the too-often unnecessary force that accompany these arrests, are a widespread problem. *These abusive arrests cause direct harm to those arrested, violate the constitutional rights at the core of our democracy, alienate large segments of our people, and make policing less effective.*"

(https://www.acslaw.org/issue_brief/briefs-2007-2011/disorderly-misconduct-the-problem-with-contempt-of-cop-arrests/.) In short, *there are very good reasons why your EIS includes this as a mandatory associated factor to be carefully reviewed upon any alert... why as soon as the primary indicators flag any officer, the information on his or her PC 148 arrests should be immediately accessible and checked as part of the review to determine whether a pattern of problematic behavior actually exists and should trigger a formal intervention.*

But, *because SFPD has never actually followed the policy and tracked PC 148 arrests, the SFPD remains "blind" about who*

its outlier officers and supervisors are who most frequently charge people with resisting. No officer has received formal intervention or even counseling based on his or her PC 148 pattern and, indeed, no SFPD supervisor has been told about any such patterns by an officer under their command by the EIS Unit sergeant... because the EIS Unit has seemingly still never gathered that information! One result has been massive, wholly unaddressed, extreme racial disparities in SFPD's use of PC 148 (and very high numbers of arrests for that charge overall for a department SFPD's size) --

**** *"African Americans in San Francisco are cited for resisting arrest at a rate eight times greater than whites even when serious crimes are not involved, according to statistics drawn from court records.*

From January 2010 to April 24 of this year, law enforcement officers cited suspects with resisting arrest 9,633 times in cases where the suspect was not charged with a felony. African Americans accounted for 45 percent of those cited, even though they make up just 6 percent of the city's population.

The statistics are drawn from San Francisco's case management system, which tracks court cases in the city....

Supervisor Malia Cohen, whose Bayview district has a largely African American population, said the numbers, *"if true, substantiate and quantify what we often hear from residents and (are) a glaring indicator that police, in similar situations, act more aggressively toward minority residents than they do with white residents — warranted or not."*

Critics say resisting-arrest charges can be used to justify excessive police force by placing blame on the suspect. They can also elevate routine interactions from the mundane to the criminal....

Peter Bibring with the American Civil Liberties Union of Southern California said the charge of resisting arrest should be looked at especially closely, because it is based solely on the officers' word against that of the suspect. *"Resisting arrest charges are always that something that need to be looked at closely, especially when they are filed in the absence of any other underlying charges,"* Bibring said. *"People in America, including police officers, are more likely to interpret actions by African Americans as threatening or dangerous."*

<https://www.sfgate.com/bayarea/article/African-Americans-cited-for-resisting-arrest-at-6229946.php>

The *San Francisco Chronicle* was willing and able to pull this information from the case management system but, *even after the publication this very damning data and the concerns expressed by Supervisor Cohen, the SFPD still hasn't figured out how to include this critical information in EIS, as required by your thirteen year-old DGO?!*

Of course, *EIS isn't about data. It's about real people -- officers and members of the public who encounter them... people who have been and will be impacted by SFPD's failures to intervene when patterns of behavior might have been detectable and acted upon...* if only news articles about extreme racial disparities in SFPD resisting arrest charges had led the department to take the policy mandates in DGO 3.19 seriously. People like Travis Hall who reportedly is still traumatized by his false PC 148 arrest involving the current SFPOA President as the officer-in-charge on the scene (and who approved the arrest report that, on its face, proves the 148 charge was legally unjustifiable), whose mother sought help in testimony before the Police Commission to no avail, whose family left San Francisco in part because of this incident, and who was awarded a significant monetary settlement which this body approved likely with no notice at all about the larger pattern of this particular type of misconduct towards African Americans and the failure in EIS to track these sorts of arrests -- <https://www.kqed.org/news/10674892/lawsuit-alleges-sfpd-racial-bias-excessive-force-in-april-arrest> . Or David Lloyd whose \$42,500 settlement in his PC 148 false arrest and brutality lawsuit against the one of the officers who shot Mario Woods was approved by the Board of Supervisors two months after Woods was killed. -- <https://www.kqed.org/news/10791354/two-s-f-officers-in-woods-shooting-have-faced-excessive-force-claims> . Or Jamie Tillotson, a San Francisco deputy public defender, who the OCC found was falsely arrested for PC 148 while standing up for her African American clients in a corridor of the Hall of Justice - <http://sfpublicdefender.org/news/2016/03/occ-public-defender-arrested-without-cause/>. Or Lorenzo Adamson, an off-duty African American SFPD officer who was arrested for 148 by the very same SFPD officer who later arrested Tillotson on the same charge -- <https://www.sfgate.com/crime/article/SF-cop-sues-claims-traffic-stop-racial-profiling-4979100.php> . Or the unnamed complainant in OCC #349-14 whose charges of false arrest for PC 148 and unnecessary force were sustained by the OCC because, per the openness report, "significant elements of (the officers') accounts were inconsistent with police practices and with common sense" but who the SFPD "punished" only with reprimands.

If the SFPD wants to argue that none of these incidents -- or the Woods shooting -- has anything to do with their failure to track PC 148 arrests and use that information anytime an officer is flagged by EIS, they are free to do so. It's not a credible argument unless they're willing to show that none of these officers had actually been flagged by EIS prior to these incidents and had not made prior PC 148 arrests that should've been easily detectable and used by the system as part of the required "associated factors" review . The truth is we'll never know because the SFPD never complied with the PC 148 part of the policy. What we *do* know is that given SFPD's persistent non-compliance with this part of DGO 3.19 and the SFPD's apparent failure to take any other action in the face of the extreme and systemic racial disparities reported by the *Chronicle* in the SFPD's use of this charge, the District Attorney is now treating all PC 148 charges as inherently suspect until body camera footage confirms their validity -- <https://sfdistrictattorney.org/article/district-attorney-boudin-announces-new-appointment-and-new-policy-designed-protect-public> . (As part of her police reform plan, the Mayor also recently directed the DPA to "identify and screen for indicators of bias" and, in fact, *the DPA has had the power to conduct audits looking for bias and other possible patterns of misconduct since Supervisor Cohen's 2016 ballot measure was passed.* Given the easily detectable pattern of racially selective misuse of this law in San Francisco and the nationwide best practice to keep a close eye on these sorts of

charges, an aggressive and proactive DPA presumably would've looked into this long unaddressed problem by now. Have they?)

UNENFORCED REFORMS ARE NO REFORMS AT ALL

I no longer have any faith that mayoral proclamations, stern words, binding policies, embarrassing press coverage and/or additional studies will have any significant impact on SFPD's thirteen-year track record of successful resistance to the DGO 3.19 EIS requirements. I do not believe SFPD's EIS is the victim of outright sabotage or intentional undermining on any individual's part. But I do believe that *the strong internal culture of SFPD is, at best, indifferent -- and much of it might be outright hostile -- to the concept and purpose of a program that "identifies and manages behaviors that result in performance related problems by individual members."* (DGO 3.19, Section I, "Policy".) *How else do you explain this extraordinarily long track-record of inadequate institutional action on what other law enforcement agencies have long understood to be a critically important component of modern police management?*

In my view, *SFPD will not fully and faithfully implement DGO 3.19 or any serious EIS system you try to impose, until you actually force them to do so with a tool that is readily-available to you.* Last month, the Commission Vice President claimed "no police department invites the federal government to conduct an audit of its policies" as San Francisco did. Perhaps she was being hyperbolic but that is quite simply not true. At least seven other American police departments -- including large agencies in Philadelphia and Las Vegas -- had previously invited the exact same type of voluntary federal reviews SFPD received from USDOJ COPS in 2016 in the short-duration of the program during the Obama administration. More importantly, *many major American cities have invited the USDOJ's Civil Rights Division -- especially during the 16 years of the Clinton and Obama administrations -- to use their "pattern and practice" authority to put their desired-reforms in the form of a consent decree that would then be overseen and enforced by a federal court.* (<https://www.justice.gov/opa/file/797666/download> .) For decades now, that's what several chiefs of police, mayors, police commissions and city councils have willingly done *especially* when local efforts to reform their own agencies have stalled or failed in the *absence* of enforceable deadlines and *without* the enforcement power of federal civil rights laws and the federal courts. The leadership in these cities have *wanted*, have *welcomed*, have *sought out and embraced* working with the most experienced police reform experts in the country *to fully modernize their agencies, to hold themselves accountable to the reform promises they've made to their communities, and that, not incidentally, a full commitment to our civil rights laws and the principles of 21st Century equitable policing demands.*

Why do cities that are truly serious about reform invite federal intervention? As former head of the USDOJ Civil Rights Division, Vanita Gupta, recently told the *New York Times Magazine* --

"The Justice Department can help create the necessary pressure on the union to participate in reform. When I was there during the Obama administration, we went into cities like Ferguson, Chicago and Baltimore, where there was substantial evidence about a pattern or practice of unconstitutional policing, like racially discriminatory practices or excessive use of force. Over the course of several months, we talked to hundreds of residents, activists and community leaders and hundreds of police officers, digging into every document you can think of in the Police Department, to really come up with a picture of what was happening. Then the Justice Department can negotiate an agreement with that city that contains a lot of reforms around use of force, discriminatory policing, accountability, supervision and training. The agreement is filed in court with a federal judge, sometimes as a consent decree, which has more teeth for enforcement and has often run for five years. The consent decree forces the hand of the union and the rank and file. It can create the political will, over years, to actually see reforms through. That sustained focus really matters."

(<https://www.nytimes.com/interactive/2020/06/13/magazine/police-reform.html> .) San Francisco's charter already contains an explicit exception for police officers' and firefighters' interest arbitration rights for any policy changes imposed pursuant to a consent decree, so the dynamic Ms.Gupta describes would work well here as well. (Charter Section A.8.590-5(g)(3).)

I am sure we all hope we are now less than seven months away from a return to a USDOJ that features this critical federal tool that has been of so much assistance to all of the most successful big city police reform efforts in recent times. *It is already quite clear that voluntary reform of SFPD's EIS system has simply not worked* notwithstanding the best efforts of so many people. The only plausible, effective change in this dysfunction dynamic that I see -- the only one that SFPD will take seriously and that the public *should* take seriously -- would be for you to *make a public commitment now to invite a federal "pattern and practice" consent decree to hold yourselves and SFPD the EIS commitments and to subject them to court-enforced deadlines if SFPD cannot by, January 1st, suddenly turn EIS into a major organizational priority... delivering far more concrete progress and action than has been shown on EIS since the USDOJ COPS report.* Give them one more chance and a hard deadline. Anything less is no longer credible and will be understood by the internal culture of the SFPD as "just more of the same" and nothing they've not heard several times before from prior mayors and police commissions.

In the event the presidential election results do not mark a return to USDOJ pattern and practice work or if you don't want to wait that long to seek a decree to enforce the EIS obligations, there is one alternative. The California Department of Justice *does* have similar "pattern and practice" police reform authority under state law, has used it in Riverside, Bakersfield and Kern County but, at this point, has less experience and capacity for these sorts of broader decrees. However, there is no legal reason a "pattern and practice" decree must be comprehensive. You could seek and Cal DOJ could impose a limited decree covering only the EIS system (for now) so at least that important program is brought under legal deadlines and court enforcement.

Nothing else has worked. If you have a better idea for how you can succeed with EIS when so many before you have failed, I strongly encourage you to publicly explain what you plan to do differently, what concrete results you will demand by what dates, and how you will hold yourselves and the department accountable -- this time -- to your EIS commitments.

Thank you.

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