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Commissioners,

Thank you for your attention during our brief presentations Wednesday night. I wanted to follow-up on a few things that came up that evening.

First, however, I cannot emphasize strongly enough that our words and good-faith efforts will mean nothing at all unless the Police Commission takes **action** on the recommended steps shown to reduce racial disparities. Many of these proposed solutions have been offered to the SFPD and this Commission by myself, DPA, a variety of law enforcement experts as well as community and civil rights groups many times before. And, just as the enforcement disparities themselves have become dangerously normalized in San Francisco, Police Commission **inaction** on the recommendations it receives on this subject has also become normalized within the SFPD.

That's why when specifically asked for a presentation focused on solutions for its glaring racial disparities problem, the SFPD's lengthy presentation last week contained literally **no new initiatives** aimed specifically at significantly reducing the disparities. Instead, their proposed approach relies exclusively on reforms already enacted or underway. They are asking the Commission to have faith (as in "belief without evidence") that what they're already doing will eventually... and indirectly... result in reductions that will be "acceptable enough" to the general public and, most importantly, to black and brown communities fed up with racially disparate policing.

Perhaps that's why Chief Scott's attention was apparently elsewhere during some of our presentations and, as importantly, during the presentation from John Alden whose considerable and highly-respected expertise — (developed during stints at SFPD Internal Affairs, the DPA, the San Francisco District Attorney's Office and now as the head of Oakland's civilian oversight system) — is of obvious value to any serious effort in San Francisco to address this problem. After all, the SFPD has learned over the years that the Commission will devote significant time to discussing and expressing concern about the disparities but, in the end, has been very unlikely to actually **require any specific action** in a timely manner on recommendations from the DPA, from the community, or from outside experts designed to combat them. That's presumably why, when asked Wednesday for the SFPD's response to our recommendations, the Chief offered no substantive reaction at all to the various specific proposals — no critique, no specific areas of agreement or disagreement, just platitudes — even though the summaries of our proposals had been available days in advance and, in my case, had been provided in writing months prior.

But in the end, the extreme enforcement disparities in San Francisco persist **not** primarily because the SFPD itself has never made it a priority to reduce them. They persist **only** because the civilian oversight body that runs the SFPD — the Commission whose responsibility is to "manage and set policy for the Police Department" (DGO 1.01) — has never **required** SFPD to actually do anything they weren't already inclined to do in order to reduce them. It's the **Commission's inaction** that has allowed these disparities to persist... that has normalized them... and that has normalized the SFPD's very underwhelming reaction to them. Specific, well-informed proposals are on the table. The SFPD's indifference to them is predictable but, at this point, should not be a barrier to Commission action given the ample opportunities SFPD has had to treat these proposals — and the racial disparities they'd reduce — more seriously and with far greater urgency.

If you hope to significantly reduce your racial disparities, you will act expeditiously to **require** the SFPD to:

- (1) proactively root out explicitly-biased officers from within its ranks by **at least** conducting the social media reviews called for by the California RIPA Board in January;

(2) prohibit the use of tactics inevitably infected by implicit biases **starting with** a ban on pretext stops; and,

(3) create peer-to-peer responsibility for disparity reductions and foster internal culture change throughout the ranks by **at least** mandating the sort of scenario-based training — offered (at no cost) by Georgetown University Innovative Policing Project's ABLE Program — that will prioritize and, in effect, “weaponize” your “duty to intervene” policy. (Why not better empower and help all the “good cops” play a far more active and productive role in dealing with the knuckleheads in their midst?)

On the other hand, if you're satisfied with the SFPD's proposed “stay the course” approach and the glacial and almost imperceptible pace of disparity reductions — if you're basically content with the department you manage producing some of the worst big city racial disparities in the country — you'll remain in discussion rather than action mode. In that case, I hope you're willing to publicly explain to San Francisco's communities of color why they should still find that acceptable in light of the extreme severity and decades-long duration of SFPD's racially-disparate policing.

## 1. MY FULL RECOMMENDATIONS

Director Henderson indicated my full recommendations are available to the public on-line. They are not. My recommendations are spelled out in correspondence provided to the Commission and SFPD earlier this year. They were submitted more than 30 days ago and have consequently been removed from that part of the Commission's public website. I am pasting that correspondence below so that it's again available on your website for 30 days and I am attaching my 2016 submission that was invited but never heard or acted upon by the Commission.

## 2. BANNING PRETEXT STOPS

Echoing Mr. King's remarks, it was extremely frustrating to hear Chief Scott excuse the SFPD's inaction on the renewed calls for a pretext stop ban with the claim that he needs to be “thoughtful” and balance the **alleged** crime fighting benefits of using a tactic long-recognized to be a primary driver of racial profiling disparities. The research is clear — some from the same academic partners SFPD claims to rely upon — and a consensus is building in law enforcement that the alleged value of pretext stops has been wildly exaggerated and is outweighed by the damage to the legitimacy of law enforcement caused by the racial disparities they've been shown to produce.

The pretext stop is also a tactic that encourages and normalizes officers **lying** to the public about their actions and true motivations. Consider how this typical exchange is experienced and understood by both an African American driver and an SFPD officer —

“Officer, why did you stop me?”

“You failed to signal a lane change. Would you mind if I searched your trunk?”

Of course, if the **real** purpose of the stop was to address an actual public safety threat caused by the failure to signal a lane change, there would be no reason to search the trunk. But the pretextual excuse is offered as though it's the real reason. The officer knows he is not being transparent and honest about what's **really** going on and the driver knows that too. Add to that the very long history of racist policing in America... the events of recent years... and SFPD's own data showing that for the last 20 years African Americans have been at least **six times** more likely to be stopped and at least **ten times** more likely to be searched than whites by SFPD... and the driver's conclusion that he's been racially profiled is unavoidable and, statistically and historically speaking, entirely justified.

All that officer knows is that the pretext stop has **not** been banned, is still used by SFPD and is likely actively encouraged by at least some supervisors — notwithstanding the well-publicized extreme racial disparities. And what would that officer conclude about the failure to ban pretext stops in the face of the widely-publicized disparities and the (entirely justified) feelings of racial profiling they produce? That officer and his colleagues

would reasonably conclude that the sworn and civilian leadership of SFPD finds those disparities acceptable and must have somehow concluded that consistently targeting African Americans for pretext stops and searches at these high rates is actually somehow worth it. After all, they would've **banned** pretext stops by now if they hadn't, right? (No wonder Mr. King reported encountering widespread anti-black bias in the SFPD and repeatedly hearing racist tropes about black criminality from officers during his training sessions! That's what SFPD's culture and tactics have been unintentionally teaching officers to believe and the leadership of the SFPOA has openly and repeatedly asserted.)

Perhaps someday SFPD will try to offer a substantive defense for its reluctance to ban pretext stops but when and if they do the Commission must challenge the trope that they are an effective and necessary tool in law enforcement's crime-fighting arsenal. The SFPD's defense of the pretext stop — if any — must be based on fact and modern research not outdated gut assumptions and myths old guard law enforcement still cling to like a child's security blanket. If it wants the Police Commission to continue to allow the use of pretext stops, SFPD should consider and adequately respond to at least the following:

- The alleged crime-fighting benefits of pretextual traffic enforcement has been thoroughly debunked by a recent Nashville study by New York University's Policing Project -  
- <https://www.policingproject.org/nashville-traffic-stops>.
- This study and the need to ban pretextual traffic stops has been a topic of much discussion of late in professional law enforcement circles and the general public. A recent *Washington Post* op-ed from Georgetown University's Innovative Policing Project co-founder Christy Lopez summarizes the growing consensus -- <https://www.washingtonpost.com/opinions/2021/04/19/traffic-enforcement-is-broken-us-heres-how-we-can-fix-it/> . Lopez is arguably **the** most experienced, effective and respected police reformer in the country whose current work is informed by her years as the USDOJ Civil Rights Division's top person on these issues during the Clinton and Obama administrations and by her ability to see these issues and the practical considerations from a law enforcement perspective partly thanks to her upbringing in a police family. (<https://www.law.georgetown.edu/faculty/christy-e-lopez/> ) Her father was a homicide detective for LAPD.
- President Obama's 21st Century Policing Task Force recommended **six years ago** --  
"Law enforcement agencies should consider the potential damage to public trust when implementing crime-fighting strategies. Crime reduction is not self-justifying. Overly aggressive law enforcement strategies can potentially harm communities and do lasting damage to public trust.... Research should be conducted to evaluate the effectiveness of crime fighting strategies and should specifically look at the potential for collateral damage of any strategy on community trust and legitimacy."

The Police Commission ordered SFPD to respond in detail to the Obama Task Force recommendations. This is what the SFPD claimed **in 2015** about this recommendation —

"The Department is aware and considers potential damage to public trust when developing strategies to combat crime through targeted enforcement activities.... Crime-fighting strategies are tracked and evaluated for efficiency. Staff reviews the strategies specifically for elements that might result in damage to community trust and legitimacy."

***I am aware of no evidence that SFPD actually did or does this*** with respect to its authorized use of pretext stops. When SFPD says it still needs to be "thoughtful" about making changes to a long-standing tactic that it claimed it was actively studying **six years ago**, it means they don't want make the change. But it's not **their** call. As the charter-mandated policy-makers for the SFPD, it's **yours**. Pretext stops are still being made in San Francisco only because the **Police Commission** has not yet banned them. (See pages 5-7 of my September 21, 2016 letter attached.)

- While I appreciated Commissioner Byrne's suggestion that the Commission possibly pursue an experimental approach to banning pretext stops with a sunset provision that would force the Commission

to evaluate its impact before extending the ban, I made the same suggestion **five long years ago** as a possible fallback alternative to a permanent ban. (See proposed Action Item #2.A., page 7 of my September 21, 2016 letter attached.)

- Chief Scott **himself** told the Commission and public last week -- "We should not be doing those sorts of stops as the basis to look for guns. I agree -- totally agree with (Commissioner Hamasaki) -- there." Yet, in the absence of SFPD or Commission **action**, those pretext stops are permitted to continue. Why?
- The District Attorney's Office announced **fifteen months ago** it would no longer file criminal charges based on contraband found after pretext stops -- <https://www.sfdistrictattorney.org/press-release/da-boudin-pioneers-first-in-nation-policy-directives/> . Why on earth would the SFPD continue to use a tactic that drives up racial disparities and that the public experiences as racial profiling when it will no longer lead to criminal prosecutions? DA Boudin said at the time -- "Pretextual stops... are relics of the tough-on-crime era that failed to make us safer. Instead, they led to mass incarceration (and) targeted innocent black and brown drivers.... They stand in the way of fairness and justice." Supervisor Shamann Walton -- "Pretextual stops, just like stop and frisk, overwhelmingly target communities of color. These policies... have contributed to abhorrent racial disparities in this city's criminal system... and have not made us any safer.... It is time to end them." Does SFPD have any factual basis for disagreeing with these statements from two key elected officials?
- Here's the "news" about the CHP banning pretext stops in 2003 that Commissioner Byrne was intrigued to learn -- <https://www.nytimes.com/2003/02/28/us/california-ending-use-of-minor-traffic-stops-as-search-pretext.html> .

### 3. DISPARITY REDUCTION GOALS AND BENCHMARKS

Vice President Elias solicited my recommendation for what the Commission should set as racial disparity reduction goals and benchmarks. I will provide them if and when the Commission asks the SFPD for **their** proposed disparity reduction targets against which **they** believe their progress -- or lack thereof -- should be tracked going forward. Reflecting the low priority SFPD has attached to actually making progress on this subject, SFPD has so far articulated no target, no particular quantifiable goal at all. How long does **SFPD** think San Franciscans should be prepared to wait to reach the lower racial disparity levels that exist in most other major American cities? As John Alden reported on Wednesday, Oakland's efforts have reduced their key black/white disparity levels to somewhere between twice or three times as high on a per capita basis -- still far too high. Yet, SFPD's disparity levels remain stubbornly **twice** as high as Oakland's. Is SFPD willing to publicly aspire to at least reach the current Oakland levels within the next year? If not, why not?

How patient or impatient, how aggressive or flexible the Police Commission should be with SFPD at this late date in setting initial racial disparity reduction benchmarks requires knowing the SFPD's answers to these questions. I don't want to prejudge their responses but how they talked about and labelled their disparity data during last week's presentation -- "trending towards improvement" -- is hardly encouraging. In fact, the data remains largely flat with unacceptably extreme black/white disparity levels for stops, searches and uses of force respectively at **six, 11 and 12 times higher** on a per capita basis. (The presentation also failed to acknowledge the possible COVID effect on the recent data although it's widely understood that all sorts of criminal legal statistics covering the "lockdown year" should probably not be used to evaluate longer term trends.)

They touted the good news that the hit/yield rates for searches of blacks and whites had equalized but failed to contextualize the absolute horror of what that still means when the other disparities have still **not** been reduced. SFPD now knows it is neither more nor less likely to find contraband when they search blacks compared to whites yet they **still** stop blacks **six** times and search them **11** times as often. This is exactly what my former ACLU colleague and mentee in this work, Michelle Alexander, later described masterfully as *The New Jim Crow* in her best-selling book more than a decade ago. If you knowingly target -- as SFPD is still doing statistically -- far more black and brown people for stops and searches even though you know at least 70% of the searches for all those races/ethnicities will uncover nothing illegal, the result will inevitably be criminal courts, jails and prisons filled overwhelmingly with black and brown people. And, in turn the loss of legitimacy and trust for SFPD that flows from continuing practices that they now **know** target African Americans for searches at a rate 11 times higher than whites even though 70% of those searched are wholly

innocent — statistically confirming the sense in the African American community that they are **still** singled out in 2021 (!) for far harsher treatment — does incalculable damage to the SFPD's ability to effectively serve and improve public safety in that community.

Two decades ago I led a multi-organizational national campaign to legislatively-require and/or encourage voluntary collection of race data on stops and searches by America's law enforcement agencies. That partnership between the major civil rights organizations and key law enforcement groups like the National Organization of Black Law Enforcement Executives (NOBLE) proved to be very successful and generated considerable bipartisan support. For example, I worked with then State Senator Barack Obama on his Illinois data collection bill and teamed with NOBLE to persuade then-Governor George W. Bush to direct state agencies in Texas to collect the same data young State Senator Obama's law required. The oft-repeated mantra then from our allies among forward-thinking executives in law enforcement trying to convince their colleagues to get on board was "we can't manage what we don't measure." And, the flood of law enforcement racial disparity data from around the country that now exists traces back to the jumpstart for those efforts that the campaign was designed to provide.

But the goal was never **just** to measure the problem — though we knew the new data would make it impossible for the recalcitrant corners of law enforcement (particularly the police unions) to continue gaslighting the public with denials that the problem even existed. (Mission accomplished!) The goal was always to facilitate **proactive management** of the problem and to eventually solve it.

At this point, thanks to the boost from the 96A legislation spearheaded by then-Supervisor Cohen, few agencies have had better and more detailed disparity data **measuring** the problem as well as SFPD. But very few big city agencies are doing **less** than SFPD — over an extended period of time — to actually **manage** and address the particularly extreme disparities the local data has irrefutably exposed. Over the intervening years, a variety of management solutions have been tried by others — but not SFPD — to reduce these sorts of disparities and some consensus best practices have emerged. Those form the basis for the recommendations I've highlighted in my repeated submissions.

But if SFPD still has not articulated any particular quantifiable goal for disparity reductions over any particular time frame —and the Police Commission still fails to set these for them — San Francisco cannot be said to be actually **managing** at all the problem they've spent a lot of time and money painstakingly measuring. And, the quarterly 96A reports will continue to be deeply dispiriting — and quite damning — exercises in handwringing... likely documenting the truly shocking but nonetheless no longer surprising scope of the very serious problem the SFPD stubbornly refuses to prioritize.

The SFPD knows how to use quantifiable goals to prioritize the problems it's actually committed to effectively addressing. Those of you on the Commission for a few years surely can spot the difference when the SFPD is committed and highly motivated to achieving institutional goals and when it fails to truly prioritize the sort of changes that significant segments of the internal culture continue to resist.. (or at least are not yet convinced are actually needed). President Cohen surely recognizes the tell-tale signs of institutional foot-dragging from SFPD from her eight years on the Board of Supervisors. And, the two newer Commissioners will learn this lesson soon enough.

For now, consider this contrasting example of huge "progress" towards a high priority, SFPD institutional goal — also quantifiable — over an extended period of time. Over the same last decade marked by stagnant and persistently extreme racial disparities in the policing it provides, SFPD has successfully and massively expanded its budget by an inflation-adjusted one-third, gobbling up an additional \$170 million each year in local taxpayer funding and adding a whopping 500 employees to its ranks. During this same time period, new contracts for all ranks of the department have repeatedly awarded significant pay and benefit boosts on top of compensation packages that the SFPOA leadership had already described as the most generous in the country. SFPD obviously knows how to ensure San Francisco taxpayers will pay top dollar for what **should** -- based on cost and local values -- be among the most modern, professional, effective, fully transparent, community-oriented, minimally violent and racially equitable policing in the country. The **only** reason we are still saddled with among the worst big city racial disparities in the country — notwithstanding that drastically increased level of investment — is that the SFPD has lacked the institutional commitment needed to reduce them... and the Police Commission has, to date, not required it from them.

#### 4. "OPEN DOORS"?

Addressing the presenters at the close of this item on Wednesday, Chief Scott sought to reassure us that the SFPD would always have "open doors" for our ideas. I am too old (and my blood pressure runs too high) to waste time going through open SFPD doors behind which are obviously closed minds that have, over a number of years, shown little interest in prioritizing this issue with sufficient urgency and sustained commitment.

While the SFPD's extreme racial disparities persist — and are called out nearly weekly in public comments, regularly in local press coverage, and recently in the national media — I have repeatedly provided the SFPD with best practices recommendations along with background information from a variety of law enforcement sources ranging from the California RIPA Board, to the Police Executives Research Forum, to the leading police reform practitioners now running projects in academia that have been effectively guiding ***motivated*** police organizations to improved results. Not only have none of these proposals been acted upon, it appears they've never been seriously considered... all while each and every day SFPD officers are allowed to continue to stop, search and use force against black and brown people with a massively disproportionate frequency. In short, we've allowed SFPD to continue its pattern and practice of treating African Americans and Latinx individuals differently than white people long after we've had data conclusively proving that the extremely disparate treatment has not been significantly reduced.

That's not acceptable to me. I'm pretty sure it's not acceptable to most San Franciscans. It ought not be acceptable to you. Not in 2021. It obviously ***is*** still "acceptable enough" to SFPD to not actively pursue the most impactful of the widely-known best practices changes that are obviously needed to finally start to meaningfully address these problems.

SFPD has made clear they are not truly committed to trying to solve this problem. Are you? If so, you will act.

Thank you again for your attention.

John Crew  
(415) 793-4146

cc. Police Commission Office  
Chief William Scott, SFPD  
President Shamann Walton, Board of Supervisors  
Paul Henderson, DPA  
Jermain Jones, DPA  
Kate Chatfield, San Francisco District Attorney's Office  
Brian Cox, San Francisco Public Defender's Office  
Captain Yulanda Williams, Officers for Justice  
Dante King  
Adante Pointer  
Phelicia Jones, Wealth and Disparities in the Black Community  
John Alden, Oakland CPRA

\*\*\*\*\* CORRESPONDENCE OF MARCH 14, 2021 \*\*\*\*\*

Paul,

Thanks for this email request and the brief phone conversation. You've asked for three policy ideas explained with a couple of paragraphs on each to address the various extreme racial disparities that have tragically plagued and defined San Francisco policing for generations now. You'd like my views on ***what*** can be done but I'm convinced that meaningful progress won't finally be made on this subject unless and until San Francisco confronts ***why*** this problem has been allowed to fester for so very long.

#### A NEW COMMITMENT IS NEEDED TO SOLVE AN OLD -- BUT STILL URGENT -- PROBLEM

Racial disparities in policing are ***not*** the inevitable "cost of doing business." They are the byproduct of a series of choices. The disparities are avoidable yet, to date, San Francisco has repeatedly ***chosen*** through inaction to not make the sort of changes needed -- the



sort of changes recommended repeatedly by experts and implemented elsewhere -- that could and would, over time, drive these disparities down and make policing more equitable and effective in our City.

After all, San Francisco not only suffers from extreme racial disparities in various policing outcomes, we recently made national news for producing *some of the very worst big city racial disparities in the entire country!* ( <https://fivethirtyeight.com/features/the-biden-administration-wants-to-address-racial-bias-in-policing-what-cities-should-it-investigate/> ) After all, the consistently damning data and the various manifestations of San Francisco's racially disparate policing problem have been well-known locally and well-covered by the press for *decades*. After all, the recent Center for Policing Equity (CPE) report on SFPD racial disparities is just the latest in a very long series of reports on this glaring problem with San Francisco policing from the Police Executives Research Forum, the Burns Institute, the USDOJ, the Blue Ribbon Panel and others alongside repeated sets of prior recommendations from civil rights groups and others (including your own office). After all, organized attempts within law enforcement to measure with data and address with concrete changes its racial profiling and racial disparity problems have been underway for *more than 20 years* now with various publications and resources readily available to all touting various "best practices" approaches.

At least three San Francisco mayoral administrations, several police chiefs and countless police commissioners have now retained subject matter experts, studied the problem, held hearings and received "best practices" recommendations on these extreme racial disparities produced year after year by SFPD. San Francisco has long been willing to *study* and *talk* about the problem and to express concern ("thoughts and prayers") about it. But *when it comes to actually implementing the sort of changes that have been recommended and that could drive down the disparities, San Francisco has been unwilling to act.*

The predictable result is that the disparities persist. The data continues to confirm what people of color in San Francisco already sense -- that they are far more likely to be stopped, searched and have force used against them than their white counterparts. And, even worse, they increasingly realize *our elected and appointed officials have known for a very long time that people of color are treated differently than whites by SFPD and yet have chosen to not fix the problem* even after expert recommendations for doing so have repeatedly been presented to them. For all practical purposes, this failure to act in the face of persistently extreme racial disparities has *normalized* the disparate treatment... has robbed the problem of the sense of urgency required in order to fix it... and has made it, if not tolerable, obviously tolerated -- year after year after year.

So, what's needed far more than three more policy ideas from me or others is for *an actual, concrete, public commitment to be made to end what has been allowed to persist as de facto racist policing in San Francisco.* That commitment requires understanding and describing the problem not as mere "data disparities" but, instead, as the deeply corrosive and sometimes traumatic impact on generations of individuals and communities behind that data ... and, in turn, on the SFPD's relationship with -- and service on behalf of -- them. *It requires publicly articulating quantifiable goals in disparity reductions* across each category over a multi-year period both to inject urgency into the effort and to *provide benchmarks measuring progress or the lack thereof.* It requires publicly identifying the responsible individuals within SFPD and in DPA who will be held accountable for their agencies' roles in meeting the benchmarks, reporting on the progress and identifying and addressing any barriers they encounter. It requires the designation of a Commissioner or small committee of Commissioners who will oversee this effort and who will ensure it gets the attention and resources it needs.

In short, *it will require a sustained, multi-year effort based on a comprehensive plan.* It's been almost nine months since the Board of Supervisors passed two resolutions declaring "war" on racism and anti-Black racism to be a human rights and public health crisis in San Francisco. Those resolutions cited, in part, these persistent racial disparities generated by SFPD. Isn't it time for there to be a battle plan and strategy for actually winning the local policing part of that war and easing that crisis?

### A COMPREHENSIVE, EXPLICITLY "ANTI-RACIST", THREE-POINT PLAN FOR REDUCING DISPARITIES

I'm not going to give you three discrete policy recommendations because, in my view, doing so would fundamentally mischaracterize and trivialize the complex, multi-faceted nature of the problem. The policy solutions for the use of force disparities are not necessarily the same as the ones for the stop disparities... or for the search disparities. *Each issue requires understanding and addressing multiple factors that drive the disparities and that, without change-oriented interventions, guarantee they will continue.* For example, when the Police Commission was briefly focused on the consent search part of the problem in 2016, I was encouraged to provide my recommendations in advance of a planned hearing on that topic. I'm attaching my 2016 suggestions for 11 proposed action steps that were needed on just that part of the problem. The item was removed from the Commission calendar without being heard and, to my knowledge, has not reappeared since. As far as I know, *most of those 2016 recommendations -- based on "best practices" solutions that had been tried elsewhere or recommended by leading national police reformers like Ron Davis, then head of USDOJ COPS and President Obama's 21st Century Policing Task Force -- were, just like so many recommendations from others, never actively pursued in San Francisco.*

Instead of offering just three policy ideas, it's far more realistic to acknowledge that *any comprehensive plan to drive and keep down the racial disparities over a number of years will have to involve multiple reforms that target three critical areas in dire need of greater scrutiny and reform: (1) affirmatively rooting out all signs of explicit bias; (2) eliminating or reducing the use of short-sighted tactics and crime reduction strategies inevitably infected by unavoidable implicit bias; and, (3) fundamentally changing the elements of SFPD's internal culture that work against driving down racial disparities as a necessary and shared institutional goal.*

I was proud of last year's decision by my hometown police force to post "black lives matter" posters in stations. But *SFPD needs to affirmatively, consistently and fully align its policies and its actions with its words.* The values statements that accompanied those "black lives matters" posters require SFPD to do more than pursue only the least controversial and least disruptive of reforms. They require doing what is *necessary* to eliminate racial disparities rather than continuing to accept and tolerate them. They require SFPD to be more than merely a passive "non-racist" police department that will act on evidence of racism if and when it's exposed by others (as with the texting scandals). They require SFPD to *be consistently "anti-racist" in the sense of being proactive in promoting, pursuing and holding itself accountable to achieving racially equitable results in its policing.*

Using the terms as described by Ibram X. Kendi in his recent book *How to be an Anti-Racist*, a *non-racist* police department would fire officers who sent racist texts after they're exposed by others. But, an *anti-racist* police department would hold accountable any officer

who received or knew about those texts and didn't report it and it would address the obvious cultural problems that caused those officers to think they could send those texts with impunity. A *non-racist* police department would apologize to a former trainer who complained of the presence of widespread anti-black bias on the force. But, an *anti-racist* department would publicly acknowledge and confront with concrete reforms the cultural problem at the root of that complaint. Yes, an *anti-racist* police department would post "black lives matter" signs and supporting values statements in its stations. But, a merely *non-racist* police department would express concern about the racial disparities their policing produces while an *anti-racist* police department would proactively pursue and make the changes necessary -- even over internal opposition -- for eliminating those disparities.

I am suggesting the use of the Kendi terminology because it seems that *SFPD as an institution* -- among some of its management, most its rank and file and definitely in the broader culture -- *believes that merely being non-racist and intolerant of explicit racism (if and when it's exposed) is enough. That's why the SFPD's persistently extreme racial disparities* (that cannot be tied directly to explicit racism) *are not understood internally as an urgent enough problem to actually fix...* (unlike, say, a serious officer safety concern).

*It's why solutions to this problem* -- recommended by policing experts and implemented elsewhere -- *are not actively pursued by SFPD* if they're perceived to be too disruptive, controversial internally or requiring "too much" effort or money. An anti-racist SFPD would recognize and embrace the reality that working far more proactively and systematically to drastically reduce these disparities is key to its legitimacy, its effectiveness and, possibly and eventually, to any long-term civic willingness to continue to fund their operations in such generous amounts. *An SFPD that can't or won't work more diligently and effectively towards racially equitable policing is an SFPD that might -- and should -- eventually lose much of its public support.*

The question is whether San Francisco in 2021 is satisfied with having a merely non-racist police agency that continues to provide *de facto* racist policing in the form of avoidably extreme racially disparate results. *Is that acceptable to most San Franciscans -- having a police department that produces among the very worst racial disparities in the country? Or is San Francisco finally ready to require that SFPD fully transition into an agency that always aspires to be affirmatively anti-racist and that is, therefore, required to proactively pursue the sort of comprehensive changes that will eventually produce far more racially equitable results?*

If it's the former, this exercise will prove to be a waste of time -- just another part of an on-going charade whereby San Francisco officials periodically *claim* they want equitable treatment for people of color by SFPD but refuse to take the steps necessary to meet that achievable goal. If it's the latter, the Commission should set about --

## 1. PROACTIVELY ROOTING OUT ALL SIGNS OF EXPLICIT BIAS

It is very rare that any particular stop, search or use of force against a person of color can be proven to have been the result of the racist views of the officers involved. Not many officers are still openly hurling racial slurs in the age of body cameras and civilian cell phone recording of police interactions. But, unless SFPD is somehow the miracle, "unicorn" big city police agency that employs *no* racist officers at all, then there is no doubt that *some* of the disparities are attributable to however many racist SFPD officers are still making stops and searches and using force. It will never be possible to quantify exactly how much of the problem is attributable to them. But it *is* possible to minimize this part of the problem as much as possible by being far more proactive about it. That's why *SFPD should be doing what other major police agencies are already doing to try to identify and root out officers who harbor or support racist, extremist, or white supremacist views* -- especially in the wake of off-duty police involvement in the January 6th insurrection, the repeated FBI warnings about white supremacist infiltration of law enforcement agencies, the demand a few days ago from House impeachment manager Jamie Raskin that more be done about this problem, and the various recent scandals involving the discovery of Bay Area and California police officers who are members or supporters of extremist groups. (<https://abcnews.go.com/US/white-supremacists-seek-affiliation-law-enforcement-goals-internal/story?id=76309051> <https://www.theguardian.com/us-news/2021/mar/10/fbi-white-supremacists-police-ties-congress> .)

For example, I copied you on my letter to the Commission two months ago urging them to require SFPD to *act on the California Racial and Identity Profiling Advisory (RIPA) board's recommendation that agencies conduct social media reviews to identify and root out officers with extremist views* as a necessary step towards more effectively combating avoidable racial disparities in policing. That letter called on the Commission to also *act on the recommendations from the 2020 Brennan Center for Justice report "Hidden in Plain Sight: Racism, White Supremacy and Far-Right Militancy in Law Enforcement"* and to require the SFPD to follow the example of LAPD and other big city police agencies in proactively seeking to identify any officers who may have been in DC, off-duty, on January 6th.

( <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/January%206th%20Insurrection%20in%20DC%20-%20Urgent%20Action%20Steps%20for%20SFPD.pdf> ) But, to my knowledge, neither the Commission nor SFPD have acted on these recommendations from the nation's top law enforcement experts on this subject. For the moment, they seem content with the sort of purely *reactive* posture the SFPD has always taken with respect to explicit racism on the force -- namely it will act only if and when SFPD officers are exposed by others (like the FBI, for example) -- even though increasingly SFPD's peer law enforcement agencies recognize the need to be *proactive* in at least *trying* to identify any racist officers they may unknowingly already employ. Trying to identify and root out explicit racism at the hiring stage is admirable but is a woefully inadequate approach to the overall problem.

*There must be concerted, proactive efforts to identify and root out explicit racism among those already on the force.*

## 2. ELIMINATING STRATEGIES AND TACTICS INFECTED WITH IMPLICIT BIASES

We are products of a society that creates implicit biases within all of us. Implicit bias training -- if effective -- may make officers more aware of these biases but, notwithstanding the value of heightened awareness, it has long been recognized that *certain policing strategies and tactics become unavoidably infected by implicit bias and, therefore, are significant contributors to stop and search racial disparities*. Strategies that rely on officers using "hunches" and "guesses" -- rather than specific behaviors and evidence creating reasonable suspicions -- cause racial disparities when officers' implicit biases inevitably impact their decisions. As explained in some detail in my 2016 letter, the common use of pretext stops -- where the technical, legal excuse for a stop (a burned out tail light, jaywalking, or other very minor infractions that do not normally lead to stops at all) is unrelated to the *actual* underlying purpose -- has repeatedly been shown to result in racial profiling. When communities of color know from experience -- and the data confirms -- that the very same, technically illegal behaviors in predominantly white neighborhoods do *not* result in the sorts of "fishing expedition" stops



and searches that take place in their own neighborhoods, the obvious.. observable... quantifiable.. long-standing.. racially inequitable treatment that poisons police-community relations and actively undermines community safety outweighs the supposed (but rarely critically examined) crime-suppression benefits of continuing to use this outdated and widely discredited form of policing.

So, for example, *nineteen years ago* the ACLU called on the SFPD to ***stop making pretext stops in light of local data already showing the tactic was causing the sort of extreme racial disparities that continue to this day.*** ( <https://www.aclu.org/press-releases/aclu-report-blasts-san-francisco-police-failure-report-racial-profiling-stops-and> ) *It's been more than six years since President Obama's 21st Century Policing Task Force called on law enforcement agencies to at least rigorously and publicly evaluate the use of this and other crime-fighting strategies that lead to racial profiling and racial disparities so that the most-heavily-impacted communities -- not the police -- can determine if these tactics are actually "worth it."* This is why the data on the Traffic Division's vehicular stops and searches must be fully disaggregated and presented separately from the data from the stations and other specialized units. The Traffic Division is, for the most part, making stops motivated by its traffic safety mission. Traffic officers doing traffic enforcement are generally not making pretext stops. That's *not* where SFPD's racial profiling problem is most extreme. It's in stations and units using traffic and other minor violations for *non-traffic safety* reasons.

Similarly, it's been *six years* since the *Chronicle* -- using data readily available to SFPD -- ***reported massive racial disparities in SFPD's use of Penal Code Section 148 -- resisting, obstructing or interfering with lawful actions by police officers.*** (<https://www.sfgate.com/bayarea/article/African-Americans-cited-for-resisting-arrest-at-6229946.php> ) *Officers have enormous discretion -- seemingly never questioned by SFPD management -- in deciding what conduct constitutes unlawful resistance, obstruction or interference and that data has long shown that those discretionary decisions by SFPD officers are often infected by their implicit biases.* Since that investigative piece was published, this conclusion has been reinforced time and again by incidents of questionable PC 148 stops and arrests by SFPD officers involving non-whites -- often involving avoidable uses of force, litigation settlements and now the pending criminal prosecution of an officer who ignored the 2016 use of force reforms by making no attempts to de-escalate before brutally beating with his baton an African American man who, the body cam video shows, was given no information about why he was being contacted and virtually no opportunity to comply with an officer's barked commands. (Had I engaged in the exact same conduct as that man in the exact same circumstances there is *no* chance at all I would've been brutally beaten and sent to the hospital. That sort of obviously racially disparate treatment should be unacceptable in San Francisco. Instead, through the longstanding failure to even *try* to address this particular type of already-established racially inequitable treatment, it's been normalized.) Because the law enforcement profession has long-recognized the potential for abuse of "contempt of cop" obstructing / resisting laws, the SFPD's Early Intervention System requires that officers' use of Penal Code 148 be tracked yet the Police Commission has seemingly continued to allow SFPD to ignore that critical requirement. *It would be fairly simple to identify who the outlier officers using PC 148 charges with disproportionate frequency generally and against people of color might be . . . and which particular stations, assignments, shifts, under which supervisors generate a disproportionate number of PC 148 arrests and related uses of force. A police agency committed to driving down racial disparities would proactively seek out and use this information for a variety of non-disciplinary interventions and other management purposes. But SFPD is not that agency... yet.*

### **3. CREATING, NURTURING AND REINFORCING A CHANGE-ORIENTED, ASPIRATIONALLY ANTI-RACIST INTERNAL CULTURE**

*San Francisco's very extreme racial disparities in its policing outcomes have been allowed to persist for decades because, quite simply, the SFPD's internal culture does not recognize them to be a problem that needs fixing.* There is no need to review here the many negative examples of the SFPD's internal culture that have played out publicly in recent years. In my experience, both active duty officers of color and retirees alike freely acknowledge and describe its effects when speaking candidly. One African American officer told the 2016 Blue Ribbon Panel that *"the racist culture is deeply rooted and goes back years and years."* One "high level confidential witness" described *an extremely "insular" culture that "resulted in SFPD's disconnection from the culture and practices of other metropolitan police forces"* and that "compared to other departments, *SFPD did not look beyond itself for guidance...."* ( <https://sfblueribbonpanel.com/brp-full-report> , pg. 146.) This outdated, deeply insular SFPD culture is well-known in police management circles nationally. In 2016, I worked with then-Commission Vice President Turman to re-write and finalize the job notice for the recruitment of a new chief and, working with other commissioners and the recruiter, I used my various national law enforcement contacts in an effort to try to ensure the candidate pool would include strong, diverse applicants with management experience in other big city police agencies. That effort ran into immediate and widespread skepticism that a City so well-known for allowing SFPD to remain so insular and behind the times would seriously consider outside candidates and, even if so, would adequately support an outsider chief in the face of certain internal resistance.

So since -- as a former Police Commission president liked to observe -- "culture eats policy for lunch," ***driving down these racial disparities will require intentional and concrete efforts aimed at fundamentally changing the SFPD culture that has produced and tolerated them for so very long.*** If San Francisco wants change-oriented, anti-racist, community-minded police leaders and officers to succeed internally in the face of so many officers who see nothing wrong with the *status quo* policing that has produced these disparities, it must require SFPD to implement "best practices" approaches that support and protect the former and that encourage the latter to "get with the program." For example, *agencies that truly want and expect officers to intervene to prevent misconduct, to report examples of explicit bias, or to raise questions about implicit biases infecting discretionary decisions, don't rely on mere "not on my watch"-style pledges.* They take advantage of the best training and comprehensive programs available designed to make sure "the bad cop has more to fear from the good cop than the other way around" and that at all times there is a shared responsibility for not allowing "bad policing to undermine good, anti-racist policing." *The Georgetown University Innovative Policing Program run by one of the most experienced and successful police reform veterans of the Obama and Clinton Justice Departments, Christy Lopez, offers to police agencies at no cost the services its ABLE Project (Active Bystanderism for Law Enforcement) -- "a national hub for training, technical assistance, and research, all with the aim of creating a police culture in which officers routinely intervene as necessary to: prevent misconduct; avoid police mistakes; and, promote officer health and wellness" and that includes "practical, scenario-based training for police agencies in the strategies and tactics of police peer intervention."* The "catch" is that in order to qualify for this no cost partnership the agency "must commit to creating a culture of active bystanderism and peer intervention through policy, training, support, and accountability." ( <https://www.law.georgetown.edu/innovative-policing-program/active-bystanderism-for-law-enforcement/> ) *Why does SFPD --*

***with an internal culture that produces some of the worst racial disparities in the country -- still buck the national trend towards providing officers with high quality, scenario-based training designed to create new police cultures unified against explicitly racist policing and armed with the tools to question and change policing infected by implicit biases?***

By way of one more example, a culture that actually **wanted** to drive down racial disparities in uses of force would proactively **use the data it already has to hold itself, its top and mid-level management and its rank and file accountable not just to the goal of ensuring force is used sparingly against all but also is not used disproportionately against people of color.** Consistent with patterns seen in other big city police agencies, SFPD's own data shows that relatively few outlier officers use force far more frequently than their similarly-situated peers. An anti-racist agency would dig deeper to determine whether these particular officers are also disproportionately responsible for creating the racial disparities in uses of force -- and, if so, why. ***Not using the available data that might pinpoint the causes for this problem and lead to solutions means the culture does not see using force more frequently against people of color to be a problem at all.*** This same cultural denialism about the use of force data exists on the station level. SFPD's data has long shown Mission Station as the SFPD's outlier in uses of force and, in turn, the CPE data makes clear that Mission Station is a major driver of the SFPD's overall extreme racial disparity in uses of force because of the frequency Mission officers use force against Black and Latinx subjects.

(<https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/PoliceCommission021021-CPE-SFPD-Report-Final.pdf>, Figure 19, pg. 33.) This has been well known for a long time. Mission Station's uses of force skyrocketed 60% from 2012 to 2014 and has remained high since then. Half of the ten SFPD officer-involved shootings in 2015 involved Mission Station officers. But my own and others' prior pleas to San Francisco officials to zero in on the source of the problem fell on deaf ears. In 2019, SFPD Internal Affairs and DPA veteran staffer John Alden framed for *Mission Local* what had become basically common knowledge -- "Every Station at SFPD has a culture, reinforced by each officer's right to pick their station assignment, so some wonder if this trend is caused by Mission Station's culture." But ***because the internal culture of SFPD seemingly has no interest in working to reduce racial disparities in uses of force, it has shown no willingness to confront and honestly address -- much less hold anyone in particular responsible for fixing -- a primary source of this problem, Mission Station.***

## CONCLUSION

My submission in 2016 on this same issue concluded -- "I cannot emphasize strongly enough that without concrete **actions** of the type outlined above, this problem will not solve itself. ***In fact, inaction on this topic over many years has made the problem worse. It's time to make it better.***" Thanks to ***another four-and-a-half years of inaction*** -- a time period devoid of any particular strategic focus on these disparities, no articulated goal of reducing them, much less a comprehensive "best practices" plan for doing so -- ***it should be no surprise that by 2021 San Francisco would be singled out for posting some of the very worst racial disparities among all big city police forces in the country.***

Here's hoping San Francisco is now finally ready to address its addiction to *de facto* racist policing in a meaningful and comprehensive manner. And, here's hoping that you and DPA stand ready to do your part -- by providing the Commission with the sort of "best practices" policy analysis and expertise they need and have a right to expect from DPA... by holding SFPD's feet to the fire when they lag in their efforts... and, by holding **yourselves** fully accountable to your long-standing institutional policy and auditing role under a series of charter amendments enacted by the voters to create and fully empower the OCC/DPA.

I confess I'm worried that the departure of Samara Marion in 2020 and, as far as I can tell, the failure so far to either hire or designate her replacement in the critical DPA "policy analyst" role may not bode well for the success of your efforts. I don't mind being asked for my recommendations (again) on this topic but ultimately it's the DPA's job to continue performing this critical policy advocacy function for the Commission and SFPD. The charter requires it. The times demand it. And the public deserves it. Both the SFPD and DPA are extremely well-funded. A city truly committed to addressing these and other much-needed policy reforms in SFPD would prioritize filling this critical policy analyst role in DPA with experienced, top level talent as soon as possible. Please let me know if you think I could provide any assistance or advocacy that might help bring that about. And, of course, please clue me in if you believe the gap left by Samara's departure has already been addressed.

In case it's helpful to them, I am taking the liberty of copying a few individuals who I believe are among the other "Justice Reform Partners" you reached out to seeking suggestions on this topic. Please feel free to share this with your other partners or anyone else.

Thank you,

John Crew

Enclosure

cc. Members, San Francisco Police Commission  
Chief of Police William Scott  
Mayor London Breed  
Members, San Francisco Board of Supervisors  
James Byrne, Police Commission nominee

Yulanda Williams, Officers for Justice  
Yolanda Jackson, Bar Association of San Francisco  
Dante King  
Phelicia Jones, Wealth and Disparities in the Black Community  
Brian Cox, Public Defender's Office  
Danielle Harris, Public Defender's Office