CFLJ COMMENTARY

The Center for Law and Justice Comments on the Preliminary
Albany Police Department Racial Bias Audit Report

CNA, the organization hired by the City of Albany to conduct a Racial Bias Audit of the Albany Police Department, has completed its preliminary report, available on the City Auditor’s web page (file:///C:/Users/jbjre/AppData/Local/Temp/Albany+NY+Police+Department+Racial+Bias+Audit+DRAFT+2020-11-03++Public+Comment-1.pdf).

Community members have until Friday, November 13, 2020, to submit their comments regarding the CNA Preliminary Report to smartjustice@cna.org.

Turn the page to read the Center’s letter to CNA.
Dear Ms. Thorkildsen:

The Center for Law and Justice appreciates the opportunity to provide commentary on CNA’s preliminary report, “Racial Bias Audit of the Albany, New York Police Department.” Four modifications may increase the community’s confidence in CNA’s final report, thus strengthening the impact of the audit.

In the interest of brevity, we do not here discuss the areas of CNA’s report with which we find ourselves largely in agreement. Rather, we address four areas where we believe the preliminary report needs modification. Not attending to the following concerns may jeopardize the credibility of the report with Albany’s black community, hindering the progress of the Albany Police Reform and Reinvention Collaborative:

- Though the report speaks frequently to the issue of implicit bias, there is no discussion of the primary source of racial disproportionality: systemic racism;
- Key data regarding the LEAD program are not included;
- The findings and recommendations section regarding the APD’s poor information processing is missing a few elements we believe critical to promoting transparency; and
- The report does not provide any data reflecting the retention rate for black officers as compared to the retention rate for white officers.

1. Systemic Racism

The primary focus of the report, listed first among four objectives on page 2, is:

“Assess and monitor APD’s internal operations, policies, procedures, and practices to detect the presence of implicit bias and systemic racial bias.”

This goal is in keeping with one of the three primary purposes of the audit, as articulated in the Albany Chief Auditor’s RFP:
“…provide the administration with baseline information to inform the City of Albany’s response to Governor Andrew M. Cuomo’s Executive Order No. 203: New York State Police Reform and Reinvention Collaborative.”

The report’s heavy emphasis on implicit bias risks sending the Collaborative down an unproductive path. As in most communities, in Albany systemic racism has had a much greater impact than implicit bias on the disproportionate representation of Blacks among arrests.

Recognizing the complexity of the problem and calling for Collaboratives to design transformational change in policing, on June 11, 2020, Governor Cuomo reiterated that police reform needs to address decades of systemic racism. To send the Collaborative in search of solutions to implicit bias when the problem is largely attributable to systemic racism may be only minimally productive.

For the past eight months, the Center has been engaged in a collaborative dialogue with the Mayor, the Albany Police Chief, and the Common Council President regarding the impact of systemic racism on Albany policing. One of the challenges involved in this process has been a common misconception that systemic racism cannot be considered to have impacted Albany policing if no intentional bias by police officers can be demonstrated.

After months of discussion, all four parties to the dialogue agreed that the following definition of “systemic racism” (adapted from the Aspen Institute’s definition) is an appropriate one to guide our work:

“Systemic racism” is a system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity. It identifies dimensions of our history and culture that have allowed privileges associated with “whiteness” and disadvantages associated with “color” to endure and adapt over time. Systemic racism is not something that a few people or institutions choose to practice. Instead it has been a feature of the social, economic, and political systems in which we all exist.

Confirming the impact of systemic racism does not require establishing that any individual actors have engaged in acts of bias --- implicit or otherwise. The impact of systemic racism on criminal justice system processes is found in the existence of racial group inequities.

On page 4 of its proposal in response to the Racial Bias Audit RFP, CNA states: “We will use administrative data to conduct quantitative analysis to, among other things, understand disparities in law enforcement actions experienced by community members by race.” Albany’s black community members experience disproportionate arrest rates due to many factors beyond implicit bias.

These factors ---- including higher poverty rates among Blacks than Whites, poorer educational opportunities for Blacks than Whites, higher unemployment rates among Blacks than Whites, and poorer health care opportunities for Blacks than Whites --- result from systemic racism: “a system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity.”

Police department policies may unintentionally exacerbate systemic racism. If the APD and the community are to effectively partner in the Collaborative’s efforts to reimagine policing in a way that respects that black lives matter, we must all first acknowledge the impact of systemic racism on Albany policing. The Racial Bias Audit should include the fact that in Albany, Blacks are arrested at a rate about twice their representation in the general population, while Whites are arrested at a rate about half their representation in the general population.
The data reported in Figure 8 (Racial demographics of all arrests) and Figure 9 (Racial demographics of arrests for resisting arrest) clearly support a finding that systemic racism has had an impact on Albany policing, when viewed together with census data. It would be helpful if CNA added another figure to accompany Figures 8 and 9: the distribution of racial groups in Albany’s general population.

The Center contends that, after the new figure with census data is added, the very first finding of the report should be:

Finding No. 1: “Statistical differences present in arrest data when comparing white people to people of color against their comparative representations in the general population, reflect the impact of systemic racism on Albany policing.”

This finding should be accompanied by Recommendation No. 1.1:

Recommendation No. 1.1: “The APD should acknowledge the impact of systemic racism on Albany policing and commit to helping reduce that impact.”

The fourth goal of the CNA report requires recommendations for reforms that eliminate racial and implicit biases in policing deployments, strategies, policies, procedures, and practices, guided by evidence-based best practices and community expectations. The Center expected the Albany Racial Bias Audit to make a definitive statement about systemic racism.

The Center appreciates that systemic racism is a much more complex issue than implicit bias, requiring a candid examination of how Albany’s “public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity.” What a tall order that is for the Collaborative! It would be so much less stressful if we were to view the problem as rooted primarily in implicit bias --- there are already training programs for that. The stark reality, however, is that systemic racism is the main culprit.

As a member of the review panel that selected CNA to conduct this racial bias audit, the Center is concerned that this preliminary report misses an important opportunity provided by the RFP’s mandate to “detect the presence of implicit bias and systemic racial bias.” Given the data reflected in Figures 8 and 9, and common knowledge about the city’s demographics, the community may question a report that does not expressly articulate a finding that the data confirm the impact of systemic racism on Albany policing.

2. The LEAD Program

The “LEAD” entry in the “Acronyms” Appendix of the report needs to be changed. It is now listed as “Leadership, Education, and Development,” but the LEAD program discussed in the body of the report is the “Law Enforcement Assisted Diversion” program.

LEAD was implemented with much fanfare in 2016, with a reduction in disproportionate representation of minorities among arrests as one of its goals. The most recent data table available on the City’s LEAD web page on November 10, 2020 is more than a year old, providing diversion data from project inception to August 2019. These figures support the perception in the community that the program actually favors the diversion of white people. Of the total 195 diversions, 33% were black and 60% were white. Given the data in CNA’s Figure 8 that 64.2% of all arrests are black and 27.6% are white, the LEAD program appears to be exacerbating the disproportionate representation of minorities among arrests.

Though the APD has been promising to post the LEAD database on the City’s data portal since 2018, the database has not yet been posted and no data updates have been shared with the community in 2020.
According to a statement by the LEAD Program Manager on November 9, 2020, there have been 228 diversions since the program’s inception. If current LEAD data is available to the auditors, the CNA report should include the numbers of Blacks, Hispanics, Whites and Others among the 228 LEAD diversions to date.

In the Center’s September 21, 2020 letter to CNA, we stressed the need to examine LEAD data for the Racial Bias Audit report. A lack of current quantitative data specifying the racial breakdown of LEAD diversions may lead to the audit being viewed with skepticism by Albany’s black community.

3. Information Processing

The deficiencies in the APD’s data collection, analysis, and reporting practices (both quantitative and qualitative) leave much to be desired, and result in very little transparency. The Center agrees with the provisions of Recommendations 1.1, 13.1, 24.1, 24.2, 25.1, 28.2, 38.2, 41.1, 41.2, 41.3, 43.2, 44.1, 44.2, 50.1, 50.2, 50.3, 53.1, and 58.2. The implementation of Recommendation 53.1 (“APD should consider establishing a dedicated Research and Planning Unit, staffed by sworn and non-sworn personnel, rather than incorporating these responsibilities into the Training Unit”) would likely be necessary to accomplish all the other recommendations related to information processing.

To address the lack of APD transparency described by community members, the Center suggests that two more recommendations be added:

Recommendation 41.4: “APD should post all General Orders and Standard Operating Procedures on the APD website.”

Recommendation 41.5: “Every Office of Professional Standards investigation report should be posted on the APD website within 30 days of its completion.”

4. Officer Retention Rate

The Center has previously provided CNA with information regarding reports of bias we have received directly from black APD officers. In the interest of preserving confidentiality, we cannot go into any greater detail. However, the Center believes an indication of such bias can be gleaned from a comparison of black officer retention rates to white officer retention rates, as we suggested to CNA in our September 21, 2020 letter to you. The only reference to retention in the report is as follows:

“During the audit team’s interviews, APD personnel expressed concerns about the retention of sworn officers. In particular, there is a perception that officers from racial or ethnic minority groups have been leaving the department at higher rates. Though some factors influencing retention are not fully within the department’s control, others such as fairness and equity in promotions and special assignments, organizational culture, and internal procedural justice are and can be a major influence on personnel retention.”

The quantitative data that speak to the issue of whether the retention rate for black officers is lower than the retention rate for white officers should be added to the report. If any such disparity does not rise to a level of statistical significance, CNA can say so in the report. To state simply that there is a “perception” of differential retention rates based on race is insufficient --- the community already knows about the perception, and now expects data.
The Center for Law and Justice, one of the most experienced criminal justice advocacy organizations in Albany, suggests that these modifications may enhance the community’s confidence in CNA’s report, as well as the City’s commitment to address the impact of systemic racism on Albany policing. Once again, thank you for the opportunity to comment on the preliminary report.

Sincerely,

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