Second CFLJ Commentary on Government Officials’ Responses

The purpose of CFLJ’s commentaries is not to endorse or refute the comments submitted by government officials but, rather, to use them to help shape the structure of CFLJ’s fall Symposium, Albany’s “Recommitment to Community Policing.” We are pleased that the Mayor, Police Chief and Common Council President have all indicated their willingness to participate in the symposium. The Center looks forward to this event as a truly collaborative community/government effort to address structural racism and public safety in our city. For additional background, please see CFLJ’s First Commentary.

ISSUES FOR CONSIDERATION AT THE “RECOMMITMENT TO COMMUNITY POLICING” SYMPOSIUM

Issues for consideration raised on the basis of the first two rounds of official responses include definition of the problem; identification of the participants addressing the problem; accountability; transparency; and advocacy.

The Problem

The first step in effectively addressing a problem is accurately defining it. As so cogently explained by Mayor Sheehan in her first response, structural racism is a complex phenomenon that “impacts the operations of every institution, including government, healthcare, education, housing, social services, law enforcement and criminal justice.” In her second response, the Mayor acknowledged that continued public oversight of government operations is essential. In his responses, Chief Hawkins allowed that even the most progressive police department in the country would have the responsibility to accurately assess and address structural racism that affects its operations. At the symposium, we must be careful at the outset to adopt a shared understanding of “structural racism” as it applies to public safety in Albany.

The Participants

An effective community/government approach to addressing structural racism must include those who are affected by Albany public safety policies, and all who have a role in administering public safety policies. The Center appreciates the continued contributions of Mayor Sheehan and Chief Hawkins, asks Common Council President Ellis to rejoin the conversation, and continues to invite District Attorney Soares to join the collaboration. In her responses, Mayor Sheehan has noted that Albany’s communities need to be a part of the conversation and part of the solutions.

Accountability

Responses submitted thus far by government officials raise some questions regarding to whom the Albany Police Department is accountable. For example, the stewardship of the Albany Community Police Advisory Committee (ACPAC) is unclear. Common Council President Ellis’ responses regarding ACPAC appear to suggest that ACPAC is an entity unto itself, not subject to direction from any of its constituent components. The role of ACPAC, the District Attorney’s Office, and others in holding the APD accountable must be explored at the symposium.
Accountability is important because, as acknowledged by Mayor Sheehan, even the most *prima facie* race-neutral policing policies can be implemented in a manner that unintendedly adversely impacts minorities. When asked if it might be possible that some APD personnel might not always comply with the policies, the Mayor responded that yes, that may happen, and that is one of the reasons the department has an Office of Professional Standards which is responsible for reviewing police conduct and recommending appropriate training and/or disciplinary action.

The Center published a Community Survey in August 2019, indicating that the community (particularly minorities) has extraordinarily little trust in the APD or the District Attorney’s Office. When asked if the community would have had more confidence in an investigation of the police shooting of Ellazar Williams if it had been conducted by the State rather than the APD, Chief Hawkins responded that he could not comment because it was too speculative. Asked to describe the circumstances under which he would ask the State to investigate a non-fatal police shooting, the Chief replied that he is confident that the members of the Office of Professional Standards have the integrity, professionalism, and independence to fairly and objectively investigate non-fatal police shootings. CFLJ interprets this to mean that there are no circumstances under which the APD would ask the State to investigate a non-fatal police shooting; we will continue to clarify this matter with the Chief.

Based on responses to date, it would appear that government officials and the community hold different opinions regarding to whom the APD is accountable. Both the Chief and the Mayor express confidence in the APD to police itself through the Office of Professional Standards. Responses to the 2019 Community Survey indicate that, overwhelmingly, residents do not share that confidence.

The District Attorney’s Office and the Common Council play important roles in the accountability of the APD. CFLJ invites both to respond to the questions we sent to them on this topic.

**Transparency**

The symposium must include a discussion of transparency, including APD program data (e.g., LEAD), police department policies, and police department investigative reports. For example, the APD “Use of Force” policy Chief Hawkins submitted with his response is heavily redacted. Some of the redactions appear to make sense from a security standpoint. Blacking out where the APD stores its weapons when not in use, for example, is probably a good idea. However, many of the policy’s 46 pages are heavily redacted without any discernible reason. What criteria are used in determining what to redact? Chief Hawkins explained that policies released to the public contain redactions for tactical, personal, or strategic information, which, if publicly disclosed, may endanger officers or members of the public.

On the matter of transparency regarding the release of investigative reports of police misconduct, CFLJ asked both the Mayor and the Chief when the APD will release its report regarding the “First Street Incident” --- promised for release by the Chief by February 16, 2020. Both the Mayor and the Chief responded that the APD will immediately assess the release of the investigative documents associated with the “First Street Incident” upon the receipt of a Freedom of Information
Law request, and that that process is consistent with the public release of official investigative documents for any incident.

The need for a FOIL request for the release of an investigative report appears to be a change in APD practice, as a FOIL filing was not required when the APD released its investigative report concerning the police shooting of Ellazar Williams. CFLJ will continue to clarify the issue of transparency with the Mayor and the Chief.

**Advocacy**

The symposium must include a discussion of the extent to which Albany residents can rely on their local officials to effectively advocate for them in matters involving State policies. Some local officials’ responses include a deferral to State policy as a reason for local inaction. This deference is reflected, for example, in responses involving State Civil Rights Law 50-A, portions of which render police misconduct proceedings nearly impossible to litigate.

The Mayor has responded that she supports reforms to Civil Rights Law 50-A that ensure public employees are transparently held accountable for proven acts of misconduct, and that any reforms must take into account the legitimate safety concerns of public employees. Chief Hawkins’ responses, however, appear to indicate that he is unwilling to advocate for change in any State Law:

> …my position with respect to 50-A is consistent with my position on other laws. That is, I respect the legislative and judicial processes that have shaped the laws that govern this country, and I am committed to ensuring that the Albany Police Department operates in full compliance with those laws.

CFLJ will continue to clarify this matter with the Chief. We will also continue to invite the District Attorney and the Common Council President to comment, as their roles are critical in advocating for the community.

**NEXT STEPS**

Next week, the Center will send a third letter to government officials, asking a series of follow-up questions. These letters and the officials’ responses will be posted on this website the following week.