

Implicit Bias

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Implicit Bias in our Organizations and Our Courts

- Implicit bias describes the automatic association people make between groups of people and stereotypes about those groups (or characteristics). Under certain conditions, those automatic associations can influence behavior—making people respond in biased ways even when they are not explicitly prejudiced
- Implicit bias in the current racial context usually sources back to Anthony Greenwald at University of Washington and Mahzarin Banaji at Harvard University who developed the applied science in the form of the Implicit-Association Test (IAT)
- The IAT has been developed, enhanced, and expanded to other forms of bias beyond the racial paradigm

Implicit Bias in our Organizations and Our Courts

- It has issues and criticisms, which are all readily available and debated
- IAT might not tell individuals much about their individual bias
- According to a growing body of research and the researchers who created the test and maintain it, state the IAT is not good for predicting individual biases based on just one test
- It requires a collection—an aggregate—of tests before it can make any sort of conclusion

How it works

- A typical IAT procedure involves a series of seven tasks
- They are interrelated and create a process that reveals subconscious thinking and associative responses that are not cognitive in nature
- The response timing requires answers too fast for deliberate responses
- This makes the test hard to “fool” by someone who is aware of expected or “right” answers

- A typical IAT procedure involves a series of seven tasks
 - First Task: An individual is asked to categorize stimuli into two categories
 - Second Task: the person would complete a similar sorting procedure with an attribute of some kind
 - Third Task: individuals are asked to complete a combined task that includes both the categories and attributes from the first two tasks
 - Fourth Task: is a repeat of the third task but with more repetitions of the names, words, or images
 - Fifth Task: is a repeat of the first task with the exception that the position of the two target words would be reversed
 - Sixth Task: would be a repeat of the third, except that the objects and subjects of study would be in opposite pairings from previous trials
 - Seventh Task is a repeat of the sixth task but with more repetitions of the names, words, or images

https://en.wikipedia.org/wiki/Implicit-association_test

Task 1 (practice):	
Black	White
Aaliyah	
Task 2 (practice):	
Pleasant	Unpleasant
Suffering	
Press E to classify as Pleasant or I to classify as Unpleasant	
Tasks 3 and 4 (data collection):	
Black/ Pleasant	White/ Unpleasant
Happiness	
Press E to classify as Black or Pleasant or I to classify as White or Unpleasant	
Task 5 (practice):	
White	Black
Eminem	
Press E to classify as White or I to classify as Black	
Tasks 6 and 7 (data collection):	
White/ Pleasant	Black/ Unpleasant
Shanice	
Press E to classify as White or Pleasant or I to classify as Black or Unpleasant	
Example of a typical IAT procedure	

Implicit Bias in our Organizations and our Courts

- It can predict things in the aggregate, but it can't predict behavior at the level of an individual who took the test once
- Anthony Greenwald conceded this point, telling me that the IAT is only “good for predicting individual behavior in the aggregate, and the correlations are small”
- However, it is a mainstream psychology and a valuable tool for determining influences in thinking and decision making

ABA Test

<https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/implicit-bias-test/> Implicit Bias Test

Unconscious Bias Test: Test yourself—Project Implicit, [Implicit Association Test IAT](#).

This is an online test of quick responses to a series of words and pictures; the test measures response time to the computer images as a proxy for implicit bias. Many—including those who are major researchers in the field of implicit bias and who have committed themselves to work for civil rights, equality, and diversity—find the bias reflected by their scores to be surprising and troubling. The site itself offers this disclaimer:

It is well known that people do not always 'speak their minds', and it is suspected that people do not always 'know their minds'. Understanding such divergences is important to scientific psychology. This web site presents a method that demonstrates the conscious-unconscious divergences much more convincingly than has been possible with previous methods. This new method is called the Implicit Association Test, or IAT for short.

We will ask you (optionally) to report your attitudes toward or beliefs about these topics, and provide some general information about yourself. These demonstrations should be more valuable if you have also tried to describe your self-understanding of the characteristic that the IAT is designed to measure. Also, a variety of factors may influence your IAT performance. The score is provided for entertainment purposes only.

Data exchanged with this site are protected by SSL encryption, and no personally identifying information is collected. IP addresses are routinely recorded, but are completely confidential.

Important disclaimer: In reporting to you results of any IAT that you take, we will mention possible interpretations that have a basis in research done at the University of Washington, University of Virginia, Harvard University, and Yale University. However, these Universities, as well as the individual researchers who have contributed to this site, make no claim for the validity of these suggested interpretations. **If you are unprepared to encounter interpretations that you might find objectionable, please do not proceed further.** You may prefer to examine [general information about the IAT](#) before deciding whether or not to proceed.

Associative Learning and Cognitive Learning

- Associative learning can be defined as a type of learning in which a behavior is linked to a new stimulus
- Psychologists point out that in most situations our learning is a connected experience
- Cognitive learning can be defined as the learning processes where individuals acquire and process information
- The key difference between associative learning and cognitive learning is, unlike in associative learning where the focus is on the behavior and external stimuli, in cognitive learning the focus is on human cognition and reasoning

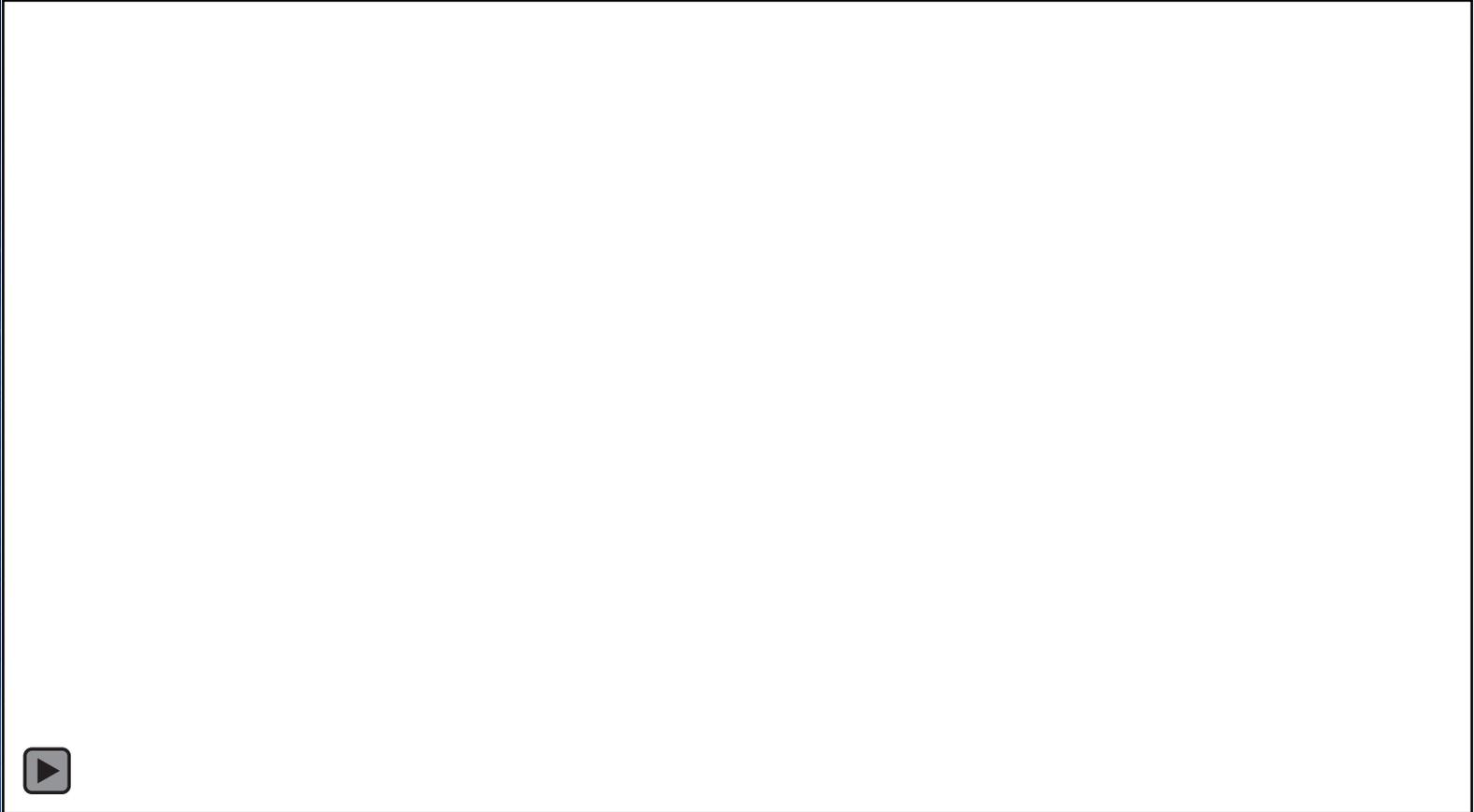
Heuristic

- A heuristic is a mental shortcut that allows people to solve problems and make judgments quickly and efficiently
- These rule-of-thumb strategies shorten decision-making time and allow people to function without constantly stopping to think about their next course of action
- They are often legitimate and effective, and work almost independently of conscious thought
- Think driving to work while on the phone

Nothing New

- Predates the current antagonism and political debate about race
- Not critical race theory—mainstream Psychology
- Acceptance in mainstream organizations
- Just a focused application of the known mental process of decision making
- Associational v. Cognitive Mental Process
- Heuristic tools for efficiency in choices ...
- Can and does results in WRONG choices

Concepts Unwrapped



Topics and Context

- State law data/reporting requirements
- New training requirements
- Policy development and training
- Outside inputs into department management
- Consultants
- DOJ
- Available reports and audits for many departments

Mandatory TCOLE Filing New Rules

- Texas Occupations Code § 1701.164
 - Specifies that TCOLE collect incident-based data in accordance with the Code of Criminal Procedure Article 2.131 – 2.138
 - Chief administrators of law enforcement agencies that meet the criteria must submit racial profiling reports to *their governing body*, as well as TCOLE
- Each agency must file an annual online report that applies to their particular situation
 - Reports are filed online through TCLEDDS
 - The reporting period for the previous year begins on January 1 and ends March 1
- Failure to submit the required report within the designated reporting period may result in license action against the chief administrator and/or civil penalties against the agency under CCP 2.134(g) and 2.1385(a)

TCOLE—Not Following the Law

- Texas' racial profiling laws have been on the books for 20 years and require law enforcement agencies each year to collect their traffic stop data in a report, comparatively analyze that information and submit the report and analysis to the Texas Commission on Law Enforcement
 - The requirement to submit a comparative analysis has existed since Texas' racial profiling law came into existence in 2001
 - A 2009 revision to the law, authored by former Irving Republican state Rep. Linda Harper-Brown, made it a requirement to submit the reports to TCOLE as well
- When KXAN requested those comparative analyses, TCOLE could not produce any for the past 10 years. TCOLE later admitted to KXAN it has not mandated that part of the law
- The law gives TCOLE authority to discipline and fine a department for failing to comply with racial profiling rules, but KXAN found that has not been happening
 - TCOLE has not taken a single official enforcement action against any law enforcement agency in the past five years for these failures
 - 250 instances over the past four years where departments have zero traffic stop data reported in TCOLE's database
 - TCOLE had no data for 65 law enforcement departments with at least a dozen peace officers

Racial or Bias-Based Profiling

328.1 PURPOSE AND SCOPE

This order provides guidance to department members and establishes appropriate controls to ensure that members of the Austin Police Department do not engage in racial or bias-based profiling or violate any related laws while serving the community.

328.1.1 DEFINITIONS

Definitions related to this order include:

Racial or Bias-Based Profiling - Any instance of disparate treatment by law enforcement based on race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability or affiliation with any non-criminal group, rather than on behavior or information identifying the individual as having engaged in criminal activity. Racial or bias-based profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

Race or Ethnicity - Individuals of a particular descent. This includes, White, Black, Hispanic or Latino, Asian or Pacific Islander, Middle Eastern, or Alaska native or Native American.

Acts Constituting Racial or Bias-Based Profiling - Initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.

328.2 POLICY

The Department strives to provide law enforcement services to our diverse community while respecting the racial, cultural, or other differences of those we serve. It is the policy and practice of the Department to provide law enforcement services and to enforce the law equally, fairly, and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability, or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

While the practice of racial or bias-based profiling is strictly prohibited, it is recognized that race or cultural differences may be legitimately considered by an officer in combination with other legitimate factors; to establish reasonable suspicion or probable cause (e.g., subject description is limited to a specific race or group), to establish relevant elements of a crime (e.g. exploitation of an elderly or disabled individual), or to gather evidence relevant to enhanced punishment due to offenses committed because of bias or prejudice.

General Order

Houston Police Department



ISSUE DATE:

April 24, 2018

NO.

600-42

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 600-42, dated October 4, 2010

SUBJECT: RACIAL PROFILING PROHIBITED

POLICY

This General Order establishes the Police Department's policy against the practice of racial profiling as set out in state and federal laws concerning racial profiling and discriminatory practices. Discrimination in any form, including racial profiling, is strictly prohibited and the department shall take immediate and appropriate action to investigate allegations of discrimination.

This General Order applies to all employees.

DEFINITIONS

Bodily Injury. For the purpose of this General Order, physical pain, illness, or any impairment of physical condition.

Criminal Profile. A profile (not to include race) based on collective experience that groups characteristics commonly observed in relation to a particular type of criminal activity (e.g., drug courier, drug transactions).

Motor Vehicle. For the purpose of this General Order, a vehicle with a motor including a motor boat.

Motor Vehicle Stop. An occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance, or for another investigative purpose and the stop results in the detention of the driver or passenger. For example, a detention of one or more persons sitting in an automobile parked in a parking lot would not be a motor vehicle stop unless the vehicle was clearly in operation.

Race or Ethnicity. A person's particular descent, including Asian or Pacific Islander, Black, Hispanic or Latino, Alaska native or American Indian, or White.

Racial Profiling. Any law enforcement-initiated action based solely on an individual's race, ethnicity, or national origin rather than on the individual's behavior or information identifying the individual as having engaged in criminal activity.

Suspect Description. Information commonly reported by a complainant or witness at or near the time of a criminal offense that includes, but is not limited to: gender, race, physical attributes (height, weight, hair, facial hair, etc.), clothing description, involved vehicle, location, and direction of travel.

Training to Overcome Bias

- Long before the current environment, Texas Police Departments had state of the art training programs in place to address the state-of-the-art social science understanding:
 - This interactive video ... is a cutting-edge training tool that moves officers into a new paradigm of thought on the subject of Racial Profiling. It is sensitive to the challenges that face Law Enforcement both in reality and in the management of public perception. The product is founded on a robust ethical perspectives projected into real life situational choices.
 - This unique training tool confronts a number of complex issues that surround the debate on Racial Profiling

- (This interactive video...)

- The danger of Officers abandoning their intuitive skills out of fear of being accused of bias and racial profiling
- The myth that statistics prove that an individual member of a specific racial group is more likely to commit a given crime than anybody else
- The dangerous trend of police disengagement from potentially sensitive suspects to avoid accusations of racial profiling or selective engagement to satisfy quotas

Perspectives in Profiling Program

- Virtual learning experience utilizing branching technology that allows officers see the outcome of their choices and evaluate their consequences
- At numerous intervals, the virtual experience solicits input, emphasizes learning points, asks questions, summarizes knowledge, provides a record of previous events, and offers positive and negative feedback
- Ability to see the outcome of these choices and evaluate their consequences
- Sensitive to the challenges that face Law Enforcement both in reality and in the management of public perception

<https://www.museumoftolerance.com/assets/documents/perspectives-on-profiling.pdf>

<https://www.wiesenthal.com/>

But another assessment of Training Austin—Now

- A new report blasts the instructional videos shown at the Austin Police Department training academy, saying they tend to show officers interacting violently with people of color and gently with white people, reinforcing racial stereotypes and biases
- The report was compiled by a panel of six community members appointed by the city's Equity Office to review the training videos with a consultant restorative justice group Life Anew
- The Austin City Council temporarily closed the police academy for upcoming cadet classes because they were concerned that the current curriculum lacked proper anti-bias and cultural sensitivity training

- Separately, a citizen group is reviewing training videos and determining if they should remain part of the curriculum
- APD management worked closely with the community panel and concurred with all their recommendations
- The community panel behind the report said it reviewed 112 training videos and is recommending that more than half of them be removed from the academy's curriculum
- The videos reviewed covered eight training topics: arrest; search and seizure; arrest and control; crisis intervention; de-escalation; tactical communication; use of force; and the legality of use of force



MAYOR'S TASK FORCE ON
**INSTITUTIONAL
RACISM AND
SYSTEMIC
INEQUITIES**

FINAL REPORT
AUSTIN, TX | MARCH 31, 2017

- Implicit biases can explain individual educators' discretionary actions in punishing students of color "more harshly and more frequently than others, even for the exact same behaviors" (Texas Appleseed 2015)
- We believe that there are systemic inequities and implicit biases in our civil and criminal justice systems that subject people of color to unfair outcomes. We believe that the collection and analysis of data will create opportunities for evidence-based solutions
- As Austin becomes a destination city, those with means move here from other parts of the country at a rapid clip, thus raising housing prices and, subsequently, property taxes, especially in the more attractive areas of the urban core. In turn, longstanding residents, particularly those with modest means, can no longer afford to live in the heart of the city; they are "pushed out" to outlying areas

Stats Don't Lie But they Don't always tell the Truth

- Traffic stop profiling data—TCOLE or otherwise—often shows a lack of clear racial disparities, but data quality may mask realities of the incidents.
- Austin Police Monitor Report contains data regarding motor vehicle stops made by Austin Police Department police officers including more data capture, search and arrest results and “hits” for actual criminality revealing disparity in results
- An article in El Paso evaluated additional data obtained by PIA requests beyond the publicly filed statistics to show additional concerns for disparities as to black citizens

- Local police officials for over a decade have appeared every spring before City Council with data that compare the ratio of traffic stops for El Paso's various ethnic and racial groups, to total traffic stops for all groups (Whites, Hispanics and African-Americans)
- Examining these numbers by themselves, it's easy to conclude there's no hard evidence of traffic-stop profiling in El Paso
- Police rarely discuss other numbers in the report: those regarding something that can occur later in traffic stops, what criminologists call a "consent search
- The article concludes that real disparities in searches and search outcomes show discrimination against black citizens in particular
- Criminologist Withrow said that in addition to hit rate data "internal benchmarks" may be the way to definitively spot racial profiling. Testing individual police officers for evidence of implicit that is unconsciously held racial bias could identify employees at high risk of profiling citizens

Hillard Heintze Report — Louisville Kentucky

- Interviewees indicated the LMPD treated people of color unfairly and stopped them at disproportionate rates. These concerns are citywide issues that the Department needs to address
- Few studies have ever determined that white drivers and drivers of color offend at different rates, leading us to believe that racial bias plays a part in some law enforcement actions
- A recent study has defined racial profiling as “the use of race or ethnicity, or proxies thereof, by law enforcement officials as a basis for judgment of criminal suspicion:
- “If police pay more attention to (are more likely to stop and/or search) members of some racial groups, then regardless of actual criminality or offending rates, those groups will bear a disproportionate share of sanctions”

UTEP Study for San Jose

- UTEP's CLHB has been facilitating interdisciplinary research on social science and law-related issues by nationally recognized experts. Previous studies have focused on police use of force, border security, racial bias and offenders with mental illness
- "This was an issue of community concern in the city of San Jose, which prompted the police department to reach out to the Center for Law and Human Behavior at UTEP to analyze their data," said Michael R. Smith, J.D., Ph.D. "We did not uncover large or widespread disparities or anything to suggest that there's a widespread cultural problem in the San Jose Police Department"
- "By shining a light on the stop practices of the police agency, you can help the police department be more fair and equitable and ensure that they're adhering to the constitution when they're stopping citizens"

Back to Concept

- Do we understand it yet?
- Can we teach and change?
- Does training work?
- Is training durable?
- Approach to training and integration into the job
- Data oversight models
- Comprehensive training evaluations and upgrades
- Testing and measuring outcomes

Policing in Black and White

- One must also be aware of the studies by Harvard University economist Roland G. Fryer Jr., PhD, who examined more than 1,000 shootings in 10 major police departments and found no racial differences in officer-involved shootings. Fryer did, however, find that black civilians are more likely to experience other types of force, including being handcuffed without arrest, pepper-sprayed or pushed to the ground by an officer
- Stanford University social psychologist Jennifer Eberhardt, PhD, and colleagues analyzed data from the police department in Oakland, California, and found that while black residents make up 28 percent of the Oakland population, they accounted for 60 percent of police stops. What's more, black men were four times more likely than white men to be searched during a traffic stop, even though officers were no more likely to recover contraband when searching black suspects (Stanford SPARQ, 2016)

Your People: Broad Spectrum

- Find out who they are
- Teach them where they are
- Engage them in dealing with each other
- Tools: eliminate differences in treatment and outcomes
- Purposeful or unintentional
- How your citizens feel about how they were treated and why

Results and Durability

- Recently, psychologist Calvin K. Lai, PhD, at Harvard University, and colleagues tested nine different interventions designed to reduce implicit racial biases. Some interventions aimed to introduce participants to exemplary individuals that ran counter to traditional stereotypes, for example. Other strategies included priming participants to consider multicultural attitudes, or teaching participants strategies to create implementation intentions (such as repeating to themselves, "If I see a black face, I will respond by thinking 'good.'"). In two studies with more than 6,300 participants, all of the interventions reduced implicit prejudice in the short term. But none of those changes lasted more than a couple of days following the intervention—and in some cases, the effects vanished within a few hours (Journal of Experimental Psychology , 2016). "Implicit associations are habits of mind," Dovidio says. "And habits are really hard to change"

<http://psycnet.apa.org/index.cfm?fa=buy.optionToBuy&id=2016-29854-001>

- Changing situations can be more feasible than changing ingrained stereotypes
- Building in criteria, process and protocols can work
- Imagine, for example, officers chasing a perpetrator after a crime has occurred. "As they chase the person, it's building up their adrenaline. ... that can lead to excessive force"
- To circumvent that possibility, he says, some police departments have implemented a policy that the officer who chases a suspect should not be the one to initiate subsequent steps, such as booking the suspect or leading the interrogation

Policing in Black and White

- Creating protocols and checklists for various law-enforcement situations can also help remove bias from the equation, adds Tom Tyler, PhD, a professor of law and psychology at Yale Law School. Federal authorities, for example, use such checklists when deciding whether to search airline travelers for drugs: Did the person use an alias? Did they pay for their tickets with cash? Are they using evasive movements?
- So far, checklists haven't been rolled out for everyday street stops, Tyler says, though such protocols could help reduce bias when officers decide whether to search a suspect or pull over a driver. "If you have a script to follow, that's more objective."
- Changing hiring practices could be an effective way to reduce racial disparities. Some research focuses on selecting new officers, and explores the cognitive characteristics that make a person more likely to resist the automatic effects of implicit bias

Your People: Broad Spectrum

- Find out who they are
- Teach them where they are
- Engage them in dealing with each other
- Tools: eliminate differences in treatment and outcomes
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- How your citizens feel about how they were treated and why

Case law: Disparate Impact v. Treatment:

- *Tex. Dept. of Houston and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 192 L.Ed.2d 514, 576 U.S. 519 (2015)
- Old Supreme Court majority found that FHA included disparate impact claims
- Builds upon prior Title VII and ADEA cases
- Does not really deal with implicit bias, just the evidentiary and procedural advantage of establishing impact rather than intent
- Same legal concept ... but this is the cause of action and its elements
- We have not found a case on discrimination with proof based on implicit bias

Caselaw

- *Sneed v. Austin Indep. Sch. Dist.*, 490 F.Supp.3d 1069 (W.D. Tex. 2020)
 - Alleging blatant racial discrimination and harassment in the AG program.
 - Constitution and § 1983. Failure to train liability still requires pattern of violations, and obvious violation sufficient to require further training
 - Failure to require and provide implicit bias training.
 - No policy maker liability
 - No conscious and deliberate indifference shown
 - Not really a bias case but direct racist discrimination by individuals
 - Failed to sue individuals ... only *Monell* claim against the District

Caselaw applications

- *Jones v. State*, 571 S.W.3d 764 (Tex. Crim. App. 2019), reh'g denied (May 1, 2019)
 - Third time Criminal defendant assault on family member
 - Applies implicit bias in the context of cross examination and permitted scope
 - Claims improper denial of cross examination on bias related to separate child custody matter
- *Mendez v. State*, 612 S.W.3d 443 (Tex. App.—Houston [1st Dist.] 2021)
 - Appeal based on juror bias in the context of child sexual assault
 - Whether juror had implicit or explicit bias about the truth of child testimony or outcry
 - Commitment question on voir dire or not?
 - Whether the jurors can and will follow the

Caselaw Standards

- *Pennie v. Obama*, 255 F.Supp.3d 648 (N.D. Tex. 2017)
 - Former Florida prosecutor and Dallas cop
 - Sued Pres Obama, Black Lives Matter, and multiple groups for statements about police racism
 - Based on implicit and explicit bias in police and law enforcement
 - Allegedly caused third parties to assault or kill police officers and threaten them
 - Two tries to recuse Judge Sam Lindsay (former Dallas City Attorney and first Black Judge appointed to the Northern District bench)
- *Jamison v. McClendon*, 476 F.Supp.3d 386 (S.D. Miss. 2020)
 - Tour de force on Qualified Immunity from Post Civil War to 2020
 - 300 footnotes
 - No direct analysis of implicit bias
 - Evaluates legitimacy of black citizen fear of police in voluntary consent to search

Caselaw Standards

- *Int. of M.T.*, No. 05-20-00450-CV, 2020 WL 5887086 (Tex. App.—Dallas 2020)
- *Int. of E.F.*, 591 S.W.3d 138 (Tex. App.—San Antonio 2019)
 - Cases involving termination of parental rights. One deals with implicit bias of jurors concerning criminal activity of the other parent, as a substitute for direct evidence of neglect by the parent whose rights are at issue. The other deals with implicit bias against mental illness by a parent in the context of deciding whether the parent has violated the statute authorizing termination of parental rights

Caselaw Standards

- *Greater New Orleans Fair Hous. Action Ctr. v. Hotard*, 275 F.Supp.3d 776 (E.D. La. 2017)
 - Non-profit housing action center sued
 - Not really implicit bias ... evidence of bias in conduct and outcomes
 - Race “testers” concluded rejection of black tenants’ calls by Hotard
 - Evidence of the total call volumes was not probative
 - Lack of expert witness testimony was fatal
- *Brown v. Madison County*, 2019 WL 5105323 (S.D. Miss. 2019)
 - Class action against Sheriff’s office for illegal search and seizure involving black citizens
 - Consent decree decision on remedial program
 - Civilian Advisory Board for review of departmental policy and programs
 - Implicit bias training and oversight required

Breaion King v. City of Austin and Officer Bryan Richter
Case No. 1:16-CV-1020-SS (U.S. District Court, Western District of Texas, Austin Division)

Officer Spradlin: Well let me ask you this. Why are so many people afraid of black people?

Plaintiff: That's what I wanna figure out! Because I'm not a bad black person.

Officer Spradlin: I can give you a really good ... a really good idea of why it might be that way.

Plaintiff: Why?

Officer Spradlin: Violent tendencies. And I want you to ... I want you to think about that. I'm not saying anything ... I'm not saying it's true. I'm not saying I can prove it or nothing. But 99% of the time when you hear about stuff like that, it's the black community that's being violent. That's why a lot of the white people are afraid, and I don't blame them

Breaion King—Blue Lives Matter

- Breaion King passed Officer Bryan Richter while going 15 MPH over the posted speed limit and Officer Richter attempted to stop King by activating his lights and siren. Rather than stop, King whipped into a nearby parking lot and then exited her vehicle. Officer Richter calmly explained to King that he was stopping her for speeding
- Breaion King attempted to elude Officer Richter, and gave the good ole, “You can’t stop me because I already stopped” excuse, she continued to be uncooperative
- Officer Richter asked King to sit back in her vehicle, so that he could contain her in case she tried to leave again. King then refused to comply with Officer Richter’s order to get back into the car
- The US Supreme Court has ruled that police officers can control the people that they stop, including ordering them out of the vehicle (Pennsylvania v. Mimms.)
- An overwhelming majority of traffic stops involve compliant people, and when somebody is failing to comply, it’s abnormal and there is always reason for concern. Based on King’s attempt to elude Officer Richter, and her continued refusal to cooperate, Officer Richter had good reason to frisk King for weapons
- Officer Richter ordered Breaion King to stand up. At that point, King was legally obligated to comply with Officer Richter’s orders, but she failed to comply.

Breaion King—Blue Lives Matter

- Richter was already concerned about the possibility of weapons, and with King's continued refusal to comply with Officer Richter's lawful orders, he reasonably would have been even more concerned for his safety. Officer Richter had an obligation to control King, and with her failure to comply with his verbal commands, he went to the next level of force by attempting to physically control her. Officer Richter grabbed King to get her stand her up. King pulled away from him and resisted Officer Richter's attempts to physically control her.
- At the moment that King escalated to active resistance, not only was she certainly committing a criminal offense, Officer Richter would have been legally justified in striking her or using a weapon such as a Taser or pepper spray in order to get King under control.
- Breiaion King fought the entire time. Despite King's efforts to fight Officer Richter's control, Officer Richter continued to use less force than he was legally allowed to use in order to control King. In the end, Officer Richter was able to arrest King without injuring her.
- After the incident, Officer Richter was disciplined for his reasonable use of force.

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

17 MAR 21 PM 4:50
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: DEPUTY CLERK

BREAION KING,
Plaintiff,

-vs-

Case No. A-16-CA-1020-SS

**THE CITY OF AUSTIN, TEXAS and OFFICER
BRYAN RICHTER,**
Defendants.

ORDER

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Defendant City of Austin, Texas (the City)'s Motion to Dismiss [#13], Plaintiff Breaion King (Plaintiff)'s Response [#15] in opposition, and the City's Reply [#16] in support. Having considered the documents, the governing law, and the file as a whole, the Court now enters the following opinion and order.

Background¹

This case arises out of Plaintiff's allegations she was subjected to excessive use of force and racial discrimination by Officer Bryan Richter of the Austin Police Department (APD) in the course of a routine traffic stop. Plaintiff claims Officer Richter and the City are liable to her under 42 U.S.C. § 1983 for violating her constitutional rights and under 42 U.S.C. § 1981 for violating her federal rights. Am. Comp. [#12] at 10.

¹The recited facts are taken from Plaintiff's amended complaint and documents incorporated in the complaint.

Order Denying MTD

- The Court found that APD studies documenting racial disparities were sufficient for 1983 liability on the Complaint. “ Particularly relevant here, the study reported that “ [e]ven when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, racial disparities in both use and severity of force remained.”
- The Court found that the Chief’s remarks blasting the APD’s attitudes SUPPORTED the claim of
“ “[W]e are at a crossroads in American policing. And the problem isn't the cops. The problem is the leadership.” *Id.* at 10. He continued, “ And I am sickened that somehow people are still trying to justify Richter. Nobody wearing stripes, or bars or stars should even think about justifying ... that the reason that woman got pulled out of that car is because she had the audacity to tell him to hurry up.” *Id.*

- Plaintiff also highlights statements by Chief Acevedo suggesting he, as well as other APD supervisors, already knew there was practice of disproportionately using force against minorities.
- "Who cares what he wrote [in the report]? Because I think we have this attitude, of I'll just cover it in the report and I'll be good to go ... Anybody can do creative writing.").
- He also stated, " Had that been a pretty white girl in her Sunday best dress, I don't think that Richter would have responded ... that way." *Id.*

From: Acevedo, Art
To: [APD All](#)
Subject: APD ALL: Media Story regarding June 15, 2015 incident
Date: Thursday, July 21, 2016 4:27:57 PM

All,

On July 19, 2016, the Austin Police Department was contacted by the Travis County District Attorney's Office regarding an incident that occurred on June 15, 2015. We were advised the Austin American Statesman would be running a story today. This incident involved a traffic stop of a subject driving 50 mph in a 35 mph zone. It took several blocks for the officer to catch up with the subject who pulled into a business and quickly exited her vehicle to enter a fast food establishment. The officer asked the subject, a 24 year old black female, to return to her vehicle while he conducted the traffic stop. The subject returned to her vehicle and sat down in the driver's seat with her feet outside of the vehicle. The subject asked the officer why she had been stopped. The officer provided her with an explanation for the stop. During the interaction the officer told the subject to place her feet in her vehicle so he could close her door. She failed to comply with that order. The officer told her a second time to place her feet in the vehicle so he could close the driver's door. She again failed to comply with that order. The officer then ordered her to get out of her vehicle. The officer physically removed her from the vehicle. The officer struggled with the subject for approximately 90 seconds both in and outside of the vehicle, trying to place her in custody. The subject was ultimately arrested for resisting arrest.

Recently, the Travis County Attorney's Office dismissed the charges on the subject and sent the case to the Public Integrity Unit of the Travis County District Attorney's Office to review the officer's conduct. The DA's Office contacted APD's Special Investigations Unit to gather more information on the incident. Currently, our department is conducting a criminal investigation on the officer's use of force. The incident was reviewed by the officer's chain of command in July of 2015. The officer's chain of command determined the officer did not handle the incident appropriately. The officer was counselled and subjected to additional training. The department is currently conducting an administrative inquiry to determine if the training and counselling had its desired effect.

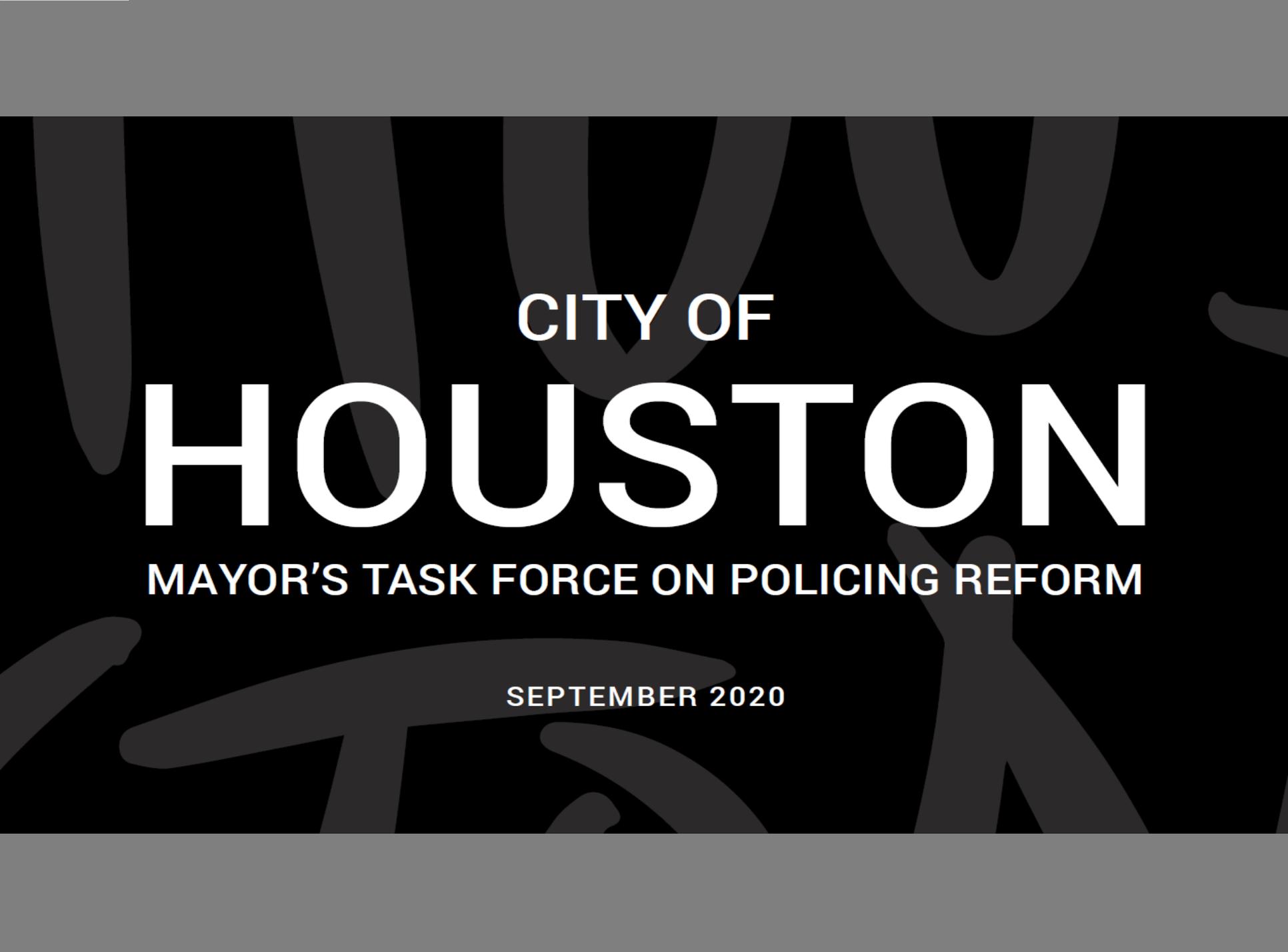
In addition to the preceding, the department has become aware of a conversation regarding race relations between the subject and the officer transporting her to the Travis County Jail. The officer's comments have raised concerns as they do not represent the values of the Austin Police Department and an administrative investigation has been initiated.

As you all know, these are very challenging times for our Nation and profession. It is critical that we continue to do everything we can to build bridges with the community we serve and to treat everyone we contact with respect. You are the best generation of police officers in the history of policing and we will end up at a better place due, in large part, to your continued collective efforts. The video documenting the enforcement contact and use of force was obtained by local media and will be aired this evening. A second video documenting the comments of the transporting officer will also be aired this evening. I am troubled by the comments made by the transporting officer as they are contrary to the mindset, standards and ethics subscribed to by our profession.

As I close, I am saddened by what I see in these videos, as they do not represent the excellence of this department or our profession. I take strong exception with the approach and mindset depicted in the videos and ask all of you to look into your hearts and consider the following: How am I conducting myself? How do these videos reflect on APD? And what am I going to do to make things better?

In closing, remember that our number one force multiplier is the community we serve. Go out, be safe and continue to win the hearts and minds of the people of Austin, one contact at a time. Be safe and thank you for what you do.

Art Acevedo
Chief of Police

The background features a dark grey field with large, stylized, light grey handprints and human silhouettes. The handprints are positioned as if holding or supporting the central text. The silhouettes are scattered throughout, some appearing to be in motion or reaching towards the center.

CITY OF
HOUSTON

MAYOR'S TASK FORCE ON POLICING REFORM

SEPTEMBER 2020

Houston Mayor's Commission

- We recognize that law enforcement work must be reserved exclusively for exemplary citizens ... (f)alling short of this lofty ideal puts a civil society at risk. It subjects the public to implicit biases, invites abuses, and fosters distrust for law enforcement.
- The Houston Chronicle reported that “many researchers have concluded the best way to test racial bias is to examine what occurs after a stop, when police have no doubt of a driver’s race.” The HPD should include the results of the traffic stop broken down by race, including: whether drugs or other evidence of illegal activity were found; whether a citation was issued or an arrest made; and whether the stop resulted in use of force.
- They concluded that General Order 100-6, “does not go nearly far enough in articulating HPD’s commitment to protecting and serving the Houston community in a unbiased manner. Departments across the country, including San Francisco, Orlando, New Orleans, and Fort Worth, among others, have adopted specific policies entitled “Bias-Free Policing.”

Houston Mayor's Commission

- Training is not the final answer for solving problems and cannot be said to be the perfect (or even sometimes the best) answer for addressing problems. For example, the Minneapolis Police Department implemented progressive police reform interventions, including offering implicit bias training, mindfulness, de-escalation techniques, and training for mental health crisis intervention. Despite these interventions, George Floyd was killed. Additionally, it can be difficult to find research or data that supports training effectiveness in certain areas, as many factors beyond training can impact an officer's in-field performance
- Training should allow for skill development over longer durations, rather than a one-off training session.
- New programming should be built out and expanded and everyone—all recruits, sworn officers, and civilian employees—should participate
- Any new training approaches that are deemed useful starting points should be tested and documented. Having better data that shows proven results in reducing bias within the HPD will help to ensure that only evidence-based practices are continued.

Fort Worth National Initiative

- Fort Worth is one of six pilot sites for the national initiative for building Community Trust and Justice (NI), a project designed to improve relationships and increase trust between communities and the criminal justice system.
- The National Initiative's work involves trust-building interventions with police departments and communities based on three pillars:
 - Enhancing procedural justice: the way police interact with the public, and how those interactions shape the public's views of the police, their willingness to obey the law, and their engagement in co-producing public safety in their neighborhoods.
 - Reducing the impact of **implicit bias**: the automatic associations individuals make between groups of people and stereotypes about those groups, and the influence it has in policing.
 - Fostering reconciliation: frank engagements between marginalized communities and law enforcement to address historical tensions, grievances, and misconceptions that contribute to mutual mistrust and misunderstanding and prevent police and communities from working together.

- Fort Worth Procedural Justice and Implicit Bias
 - All 1650 of FWPD's sworn officers have undergone 16 hours of training on the theory and practice of procedural justice
 - 500 of FWPD's 1650 sworn officers have undergone the 8-hour training on implicit bias ("PJ3"), and all new recruits will be cycled through as well
 - In June 2017, FWPD hosted a PJ3 peer exchange that included officers from Stockton, Minneapolis, and Chicago. The exchange prepared FWPD for its summer 2017 rollout of PJ3 and enhanced their delivery of the training modules that confront troubling episodes and themes in police history
- Fort Worth Reconciliation
 - FWPD is launching neighborhood-based listening sessions by the end of 2017
 - Urban Institute is completing a second round of public perception surveys in Fort Worth neighborhoods with a high incidence of crime

Austin PDI Report



The Science of Policing Equity

Measuring Fairness in the Austin Police Department

Presenting the Police Data Initiative Report

- Analyses of vehicle stop data reveal three important findings:
 - First—APD searches appear to be highly effective. Searches left to officer discretion (that is, not incidental to arrest) returned contraband roughly 48 percent of the time
 - Second—there are racial disparities in the decision to stop and search a suspect. Both our models of decision making around searches, the officer discretionary index and the probability of vehicle search model, reveal disparities by race
 - Third—an analysis of racial disparities in hit rates revealed no reliable differences between blacks, whites, and Hispanics. While previous research demonstrates that this is not proof of the absence of bias, it is a positive indicator
- The science of policing equity demonstrates clearly that collaboration between communities and police is necessary to rebuild trust and reduce the negative consequences that can result from racial disparities in police contacts

- Many community organizations were in attendance, as were representatives from the Travis County District Attorney's office and the Austin Police Monitor's office
- "I want to hear when we're falling short on top of when we're doing a great job, because if we only heard when we're doing things great then there's no room for improvement and we can never stop trying to improve," Dixon said
- One of the biggest discussion points at the meeting was the percentage of black citizens who are stopped and searched by Austin Police. According to 2015 Census numbers, 9 percent of Austin's population is black. But in the racial profiling report, the subjects of 12 percent of traffic stops, 31 percent of consent searches, and 23 percent of non-consent searches were black individuals

Why and How

- Effective training – think differently & deter implicit bias behavior/thoughts
 - Statistics matter
 - Supervisor engagement
 - Developing the human aspects
 - Developing police leaders
- Effective compliance with law
- Disciplinary proceedings
- Respectful workplace/community interface
 - Conversation
 - Listening
- Litigation Challenges