The Need to Transform American Policing Paradigm

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George Floyd could have been me or any member of my family. Most black people can identify someone who can tell a personal story or a story of a friend or relative that had a negative interaction with a police officer: being stopped on a pretext, having a police officer try to wrongfully enter your home (even if you are the only African American in a middle class or upper middle class neighborhood), or unnecessarily aggressive behavior.

It is often said that those who don’t know or remember history are doomed to repeat it. Unfortunately, even when individuals know and remember history, society is doomed to repeat it when systems aren’t put in place to ensure that institutional memory lives on and that corrective measures put into place remain, are enforced and are updated. Our history is repeating itself and we can only hope that this time will be truly different. I will start with some history and end with some hope.

After riots in the summer of 1967, President Lyndon Johnson established the National Advisory Commission on Civil Disorders, known as the 1968 Kerner Commission. The Kerner Commission Report issued over 50 years ago in 1968 stated what black Americans, especially those who grew up in the segregated south already knew. It concluded that “our nation is moving toward two societies, one black, one white — separate and unequal.” The report made recommendations to address deeply rooted forms of racial discrimination in housing, employment, voting and other forms of discrimination. The report noted that bad policing practices exacerbated these issues and was the catalyst to propel massive civil unrest and violent upheaval in communities across the country. The Kerner Report also referenced past civil disturbances and the reports and recommendations issued in those disturbances (1919 riot in Chicago, Harlem riot of ’35, Harlem riot of ’43, and the report of the Mc Cone Commission on the Watts riot of ’65). The report quoted one of its prominent witnesses, “I must again in candor say to you members of this commission — it is a kind of Alice in Wonderland — with the same moving picture reshowed over and over again, the same analysis, the same recommendations and the same inaction.” The recommendations of the Kerner Commission were largely ignored by President Johnson. He decided that going to the moon was easier than solving the nation’s racial issues.

The more things change, the more things stay the same. In the late 1990s, Pennsylvania cities, large and small and cities across the country experienced disruption between African American communities and their police and increased racial violence. Highly publicized events such as the Johnny Gammage killing in Allegheny County served to fuel citizens’ distrust of police. As a result, parallel efforts were initiated at the state and federal levels to study and implement recommendations and strategies to address police response issues and increase training for police officers. At the federal level, Attorney General Janet Reno created the United States Attorney General’s Working Group for State and Local Law Enforcement Training. I was appointed to serve as a member of this group. This group developed a uniform training curriculum and traveled around the country instructing police departments on issues of racial violence and hate crimes. The Federal Law Enforcement Training Center implemented a similar program in which I also participated. The Municipal Police Officers’ Education and Training Commission undertook a similar process.

Additionally, at the state level, I was tasked with managing the Governor’s Alliance for Community Policing Paradigm.

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and Law Enforcement Relations and the development of its final report. The Governor’s Alliance for Community and Law Enforcement Relations was a multi-disciplinary task force appointed by Governor Tom Ridge, composed of Pennsylvania’s law enforcement agencies and minority community leaders and various state agencies. The mission of the alliance was to formulate new strategies to address tension and develop effective team work strategies. After many months of review and analysis and public forums across the state, the alliance issued specific recommendations. One major accomplishment (among others) was the development of a widespread police accreditation program to raise the standards of policing and training. The Alliance Report and many of its recommendations are also largely forgotten.

Even when the first black president sat in the White House, lethal police attacks on young black men continued to create racial turmoil. Fast forward to Ferguson, Missouri, Aug. 9, 2014. Michael Brown, an 18-year-old black man, was fatally shot by 28-year-old white Ferguson Police Officer Darren Wilson. Wilson fired a total of 12 bullets. Brown was hit six times, all in the front. In response to the civil unrest created by Brown’s death, the President’s Task Force on 21st Century Policing was created by an executive order signed by President Barack Obama on Dec. 18, 2014. The task force issued its final report in May 2015 making broad findings and sweeping recommendations (and referencing yet another report, the 1967 President’s Commission on Law Enforcement and Administration of Justice report, The Challenge of Crime in a Free Society).

In recent weeks and months, history continued its repetitive loop in the new century and repeats itself again. On May 25, 2020, George Floyd, a 46-year-old black man, died in Minneapolis, Minn., after Derek Chauvin, a white police officer, knelt on his neck for almost nine minutes while he was handcuffed face down in the street. Floyd’s death followed those of Breonna Taylor, an emergency medical technician shot at least eight times inside her Louisville, Ky., home by plain-clothes police executing a no-knock warrant for the arrest of a man already in custody, and Ahmad Arbery, killed in a confrontation with three white men as he jogged through their neighborhood in Brunswick, Ga. Floyd’s last words were the same words Eric Garner uttered on a Staten Island street corner in 2014: “I can’t breathe.” Subsequent protests following Floyd’s death have triggered civic unrest in America at a scale not seen since the assassination of Martin Luther King Jr. in 1968.

All this effort over the past 100 years, including countless reports by very distinguished people resulting in a myriad of unimplemented recommendations, speaks to the repeated inability of governments and leaders to address systemic racism. As a result, police violence and civil unrest continue to grow on a larger and more disruptive scale. Racism is not a black problem; it is an American problem and an international problem. A reason for hope that this time will be different is that the widespread protests (national and international) involving people of all races, nationalities and ages give an indication that many more people are recognizing the vastness of the problem, the need to fix it, and that they need to play a role in the solution.

The legal community can play a significant role in addressing and resolving the underlying issues. White people can and should recognize their own privilege, not remain silent and speak up as the white attorneys in Allegheny County did in filing a complaint against a white judge for calling a black juror “Aunt Jemima.” As one of my colleagues noted, “None of my white prosecutor colleagues have walked into the courtroom and were mistaken for a defendant.” There is an incredible amount of privilege within the legal community. This privilege can be used to drive true change.

As former Justice O’Connor reminded us in Grutter v. Bollinger, society draws its leaders from the ranks of the legal profession. We must address the fact that the legal profession is the least diverse profession and capture the potential of diverse lawyers and demographic groups. Bar associations and lawyers, generally, help shape the norms of the profession. When we prioritize diversity, new lawyers are introduced to an environment that values the distinctive skills of people of all dimensions of social identity leading to greater diversity of thought and innovation. We can make the topic of race, police brutality and equality central topics at bar association meetings, resource them properly and ensure the right senior level people are on hand to participate.

We must begin to guide the process of transforming the current model of American policing to create permanent structures of policy and practice that ensures continuous assessment, training and measures of accountability that maintain and incorporate intergenerational and institutional memory. This would go a long way towards guaranteeing the full protection of our constitutional rights for all, safeguard the rule of law and avoid future violence and civil unrest. This approach could also serve as a model to other institutions in preventing discrimination and ensuring fairness in the administration of justice for the most vulnerable citizens of our society.

More Pandemic Problems: How to Protect Yourself While Protecting Your Clients

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worrying about these issues, take advantage of PBA resources that can provide guidance. Besides the PBA Ethics Committee Opinion, Ellen Freedman is a terrific person to assist you. She has been writing and teaching about planning for emergencies long before this pandemic. She can point you to not just her own articles but other resources that can help you plan for any shutdown of your practice. Many PBA sections and committees have outstanding Listservs that can help practitioners get questions answered quickly. Examples include the Listservs of the Solo and Small Firm Section and the Real Property, Probate and Trust Law Section. There are many more. Sometimes asking a question directly to another PBA member is such a shorter distance between two points than researching on the internet. For attorneys insured through USI and the Pennsylvania Bar Endorsed Program with CNA, they can call the CNA Claim Repair Hotline at 1-800-200-5212. Insureds can call with questions not just about threatened or existing claims, but ideas on how to avoid such claims.

There are many other resources available to you, including Lawyers Concerned for Lawyers, which is a free service to Pennsylvania lawyers, judges, their family members and law students for help with substance abuse and mental and emotional health. If you go to LCL’s website, you’ll find a comprehensive resource guide for the legal profession during COVID-19. It lists resources on topics from stress, anxiety, grief and resilience during the public health crisis to tips for employers on returning to work in the COVID-19 era.

Remember that being proactive can be the best way to protect yourself and your clients.