

RILEY COUNTY LAW ENFORCEMENT AGENCY
LAW BOARD MEETING
City Commission Meeting Room
1101 Poyntz Avenue
Manhattan, KS
October 16, 2017 12:00 p.m.
Minutes

Members Present:

Craig Beardsley	Mike Dodson
Usha Reddi	Marvin Rodriguez
BeEtta Stoney	Barry Wilkerson
Ben Wilson	

Absent:

Staff Present:

Director Schoen	Assistant Director Doehling
Captain Fink	Captain Hegarty
Captain Hooper	Captain Kyle
Captain Moldrup	

- I. **Establish Quorum:** By Chairman Beardsley at 12:00 p.m.
- II. **Pledge of Allegiance:** Director Schoen led the Law Board in the Pledge of Allegiance.
- III. **Consent Agenda:**
 - A. Approval of Minutes
 - a) September 18, 2017 Law Board Meeting
 - b) September 22, 2017 Special Law Board Meeting
 - B. Approve 2017 Expenditures/Credits
 - C. Juvenile Transport Reimbursement
 - D. County Inmate Medical, Facilities, Maintenance & Repairs Expenditures- (*Review*)
 - E. Riley County Jail Average Daily Inmate Population- (*Review*)
 - F. Monthly Crime Report- (*Review*)

Beardsley called for public comment and received none.

Dodson moved to approve the Consent Agenda as presented. Rodriguez seconded the motion. Beardsley polled the Board and the motion passed with Dodson, Wilson, Reddi, Stoney, Rodriguez, Wilkerson and Beardsley voting in favor, and no one voting against. The motion passed 7-0.

- IV. **General Agenda:**
 - G. **Additions or Deletions:** None.
 - H. **Public Comment:** None.
 - I. **Fraternal Order of Police Lodge #17 Comments:** Brian Johnson, President, Fraternal Order of Police (FOP) Lodge #17, briefed the Board on the activities of the FOP and employees of the

Riley County Police Department (RCPD). He stated that the FOP will once again sponsor the “Hair for the Holidays” event. With approval from Director Schoen, sworn and non-sworn personnel will be allowed to forgo shaving for the month of November in exchange for a \$100.00 donation to the Cops ‘N Kids program. The Cops ‘N Kids program supports lower income families in Manhattan and Riley County. Each December employees of the police department take 75-100 underprivileged children, who would not otherwise be able to afford holiday presents, shopping. In previous years, the FOP has raised approximately \$10,000 through this effort along with the charitable contributions from the community.

Johnson thanked Director Schoen and the Law Board for their generosity and support of the noteworthy cause. This is another example of how members of the FOP and RCPD do what they can to help fellow community members.

J. Board Member Comments: Reddi commented on the working relationship between RCPD and the Kansas State University Police Department (KSUPD). It is her belief that the two agencies work very well together; however, like anything, there is always room for improvement. The partnership between RCPD and KSUPD is ongoing, especially concerning jurisdictional boundaries and special events. She wanted to be sure everyone appreciates that partnership because there are a lot of people involved in the process.

K. Mental Health Case Manager- JAG Grant: Director Schoen explained that the Justice Assistance Grant (JAG) application for a Mental Health Case Manager fell through due to a confluence of factors. It was a five county grant for a certified peer support specialist to work part-time in the RCPD jail to assist with some of the duties currently being performed by the two mental health co-responders. A few of the counties had difficulty providing the necessary information in the time frame required to submit the grant request. As a result, the request was not submitted. Schoen added that he received communication from the National Alliance on Mental Illness (NAMI) indicating their intent to submit the grant request next year.

Reddi stated that she and Richard Cagan, Executive Director, NAMI, discussed the matter over the weekend. She was saddened to hear that the grant request was not submitted. It is her hope that the Department aggressively pursues all future grants and funding sources that are made available.

L. Manhattan- Riley County Coalition for Equal Justice Report: Jonalu Johnstone, Reverend, Unitarian Universalist Fellowship of Manhattan, provided opening remarks on behalf of the Manhattan-Riley County Coalition for Equal Justice (CEJ). She thanked the Law Board for their patience and willingness to hear the comments from members of the Coalition.

Johnstone stated that the CEJ does not view Riley County, Kansas as Ferguson, Missouri where police deliberately misused power and racial imbalance was blatant. However, they recognize that there are patterns deeply woven into American society that increase the probability of arrest and prosecution for people who are black over those who are white. Whatever the source of these patterns, they are wrong. There is a social and moral obligation to raise questions and work to end the biases that are sewn into the fabric of our culture. Racial bias is not entirely the fault of the police; however, police practices, policies, and procedures can either reinforce the pervasive problem or help to eliminate it.

The CEJ does not believe that racial bias in Riley County is any worse than the rest of the country, but they cannot assume that it is any better. In fact, evidence is clear that racial bias in certain drug related arrests in Riley County is comparable to other regions in the country and cities in Kansas. The issue is

that in America if you are black you are more likely to be arrested, and the result is a cycle of unfair assumptions about who is guilty of crimes. The public cannot be satisfied with the national norm in bias policing. Justice, not widespread practice, should be the goal. The CEJ would like Riley County to be less discriminatory, less biased, and more equal than elsewhere in the country.

The CEJ appreciates the acknowledgement by RCPD that racial bias needs to be addressed. The training on implicit bias that police receive is a good start. Police officers are trained to follow policy, treat all people respectfully, and to be evenhanded in their responses. However, the focus in the training is as much on the implicit bias officers may find against police as it is on examining their own internal, perhaps unrecognized implicit biases. Police officers need to understand that bias happens here, and more needs to be done to help them address their own and often unconscious biases. There also needs to be procedural measures to help prevent biases from having an influence on policing.

Johnstone stated that the CEJ believes that pretextual pedestrian and traffic stops need to end. Stops for minor traffic violations as pretext when searching for other violations (typically drug related) were ruled legal in 1996 by the Supreme Court. Pretextual stops open up the possibility of bias far more than traditional enforcement. Research has shown that pretextual stops create greater racial discrepancies in arrests for illegal drug possession. Pretextual stops create public distrust of the police, a breeding ground for cynicism, and a reluctance to cooperate, all of which are powerful arguments for eliminating such stops. There are many steps that can be taken to decrease racial bias in policing. The most powerful way is to end pretextual pedestrian and traffic stops, which is what the CEJ is recommending to the Law Board.

John Exdell, former Associate Professor, Kansas State University, presented the newest data from 2010-2015 on racial disparities in marijuana arrests in Riley County. According to the data published by the American Civil Liberties Union (ACLU) "The War on Marijuana in Black and White," marijuana use by race is roughly comparable between black and white individuals. Although marijuana use is roughly the same, the national racial disparity in marijuana arrests in 2010 was 3.7 to 1.

Exdell cited the following statement made by a K-State University Professor who is an expert on the relationship between statistics and the causal inferences. *"In each of the last six years for which data is available, blacks have been arrested by the RCPD for marijuana possession at a higher rate than whites, and the difference is not trivial. In the best year the arrest rate for blacks is more than twice that for whites, but in the worst (2014) the arrest rate is seven times higher. The correlation is significant.*

Given the fact that blacks and whites use marijuana at about the same rates, this strongly suggests bias. And in fact, were bias absent, we would expect that one race would always have the higher arrest rate in each of six successive years with a probability of less than .05, or 1 in 20. The six years of data offers significant evidence that there is a causal link between the race and the unequal rates of arrest for marijuana possession."

Exdell said that according to Charles Epp, University of Kansas Professor and Author of the book "Pulled Over, How Police Stops Define Race and Citizenship," data analysis from the Kansas City/Lawrence area shows that the race of the driver is the leading most important, most substantial influence of who is stopped, even when taking into account the effects of class. Research published in "Pulled Over" found a small class based disparity in investigatory stops, but it was dwarfed by the race based disparity in statistical models that controlled for both. In those models, they used one primary measure for the driver's class, the value of the driver's vehicle. They suggested that the information is

available to officers in the general sense and that they could plausibly rely in part on it as a visible clue of class. They also used a secondary measure, the driver's report of his/her annual income. They found that drivers with vehicles in the lower quartile of vehicle stops than drivers with more valuable vehicles, the driver's annual income however, did not affect his or her likelihood of being stopped.

Exdell explained that evidence suggests, based upon the aforementioned survey of over 1,000 people in the Kansas City/Lawrence metropolitan area, that the discrepancies shown to the Law Board in the previous presentation slides are not brought about by differences in the perception of who has a high class or low class car. What matters is race.

Included in the presentation was an article about Thomas Wydra, Police Chief, Hamden, Connecticut, who decided to reform his department's traffic stop criteria and end pretextual stops. Exdell said that police officers use pretext to stop drivers, when what they are really after are drugs. The most clear and decisive way to end that, as suggested by Charles Epp, is to simply end pretextual stops. Epps argues that there is little evidence that ending pretextual stops would increase the danger to the public in any way.

Exdell discussed the black/white disparity in marijuana possession arrests by Riley County Police Department for 2010-2015. He stated that in the six year period, the average rate of black persons arrested for possession of marijuana in Riley County was nearly 4.4 times greater than the rate of arrests for white persons. The CEJ believes this to be reliable data for serious concern about racial bias in marijuana stops.

Dodson thanked the CEJ for the presentation. He sought clarification regarding their desired outcome.

Exdell said that the recommendation of the CEJ is to reduce, if not eliminate, pretextual stops for minor traffic infractions (e.g., broken tail lights, tag lights, etc.).

Johnstone added that stops for minor traffic infractions are most likely to be a reflection of racial bias and are often used as pretext to search for other things.

Beardsley explained that when an individual is stopped for a traffic violation, he/she is charged with the more serious offense. That is one of the reasons the statistics are elevated. He wished to know if the Department is able to look back at the citation to determine the initial reason for the stop.

Schoen said that it is possible; however, it would require staff to go back and read all of the reports for which marijuana possession was an issue. The matter can easily become problematic. For example, if an officer stops a motorist for a broken tail light, smells and locates marijuana, how does one make a determination whether it was or was not a pretextual stop? The only way to know is to ask the officer. He said that he is mildly concerned about what appears to be the assertion that any stop for a minor traffic violation is presumably pretextual. That is not always the case.

Schoen explained that he is aware that police around the country and in specific communities have used what are referred to as pretextual pedestrian and traffic stops. In the main, they are done as interdiction programs to thwart the movement of drugs or guns. The Riley County Police Department has never had a drug interdiction program, nor have officers been trained to perform drug interdiction stops. This however, is not to say that RCPD officers never perform pretextual stops. The Department's most frequent use of pretextual stops occurs during the search for drunk drivers. For example, if an officer views a vehicle weaving in its lane of travel or if the driver commits some other

minor traffic infraction, the officer uses the stop to assess the driver's level of intoxication. Schoen added that there are occasions in which pretextual stops are used in drug investigations, but when they are it is based on specific, articulable and credible intelligence information typically revolving around a specific address or individual. Once more, the vast majority of pretextual stops performed locally revolve around DUI apprehensions.

Rodriguez explained that minor traffic infractions (e.g., broken tail light) are against the law and considered safety issues. Police officers are sworn to uphold the law. The officers are stopping motorists for something that is against the law. Possession of marijuana is also against the law. If there is an issue, the law needs to be changed. Individuals cannot pick and choose the law.

Johnstone stated the CEJ's position that there is racial bias in policing overall. Black people are more likely to be stopped by police, searched, and arrested. That has been shown across the country.

Jonathan Cole, Student, Kansas State University, stated that people of color are being arrested disproportionately. He wished to know why African Americans are persecuted for minor traffic offenses more than people who are white. He explained that although he is white he believes his cousin, who is African American, would be treated differently in a typical traffic stop.

Brian Johnson, President, FOP Lodge #17, expressed his appreciation to the Coalition for the open dialogue. He stated that he shares the concerns of the Coalition. The FOP has a vested interest to ensure that officers are enforcing the law in a fair, equitable way. If not for the matters raised by the Coalition or individual citizens, the mechanism of accountability and transparency would not be present. The officers do not want to engage in bias policing. They want to be very careful about that. The officer's ability to effectively police and keep the community safe are dependent upon the public having trust in the agency.

Johnson said he would be remiss not to address the flaws in the studies cited by the CEJ. The method in which the probability value that was presented by the CEJ was calculated is unclear, but it seems from the variables discussed that it is being evaluated at a univariate parametric analysis. In short, they are looking at a single variable and treating it with frequentist statistical analyses rather than looking at the culmination of socioeconomic variables such as time, location, and other non-parametric or univariate variables.

Johnson said that on at least four occasions the Department has addressed the concerns brought forward by Mr. Exdell. Now addressing them for a fifth time, asking for specific analyses that were conducted to evaluate whether or not the results can be trusted, they are talking about it in vague terms and in anecdotal individual situations.

Johnson also expressed his concerns with communication that was drafted by Mr. Exdell and shared on social media. He said that after reading the communication from Mr. Exdell, he can understand why some members of the public are upset. He wished to address the concerns of the public, as well as the inaccurate statements made by Mr. Exdell in the aforementioned communication.

Mr. Exdell continues to use methodology established by the ACLU in its 2013 report titled, *The War Against Marijuana in Black and White*, as the basis for his claim of racial disparities in marijuana possession arrests. Johnson explained that the ACLU report itself says, of its own methodology, that no causal relationship should be drawn from the national numbers. The data is used to describe the problem of racial disparities in marijuana possession arrests, and not to formally test a specific causal

hypothesis as to why such disparities exist. Johnson said that because they covery it does not mean that there is a causal relationship between the two. The CEJ looked at it in a univariate perspective versus looking at other variables that go along with the occurrence such as age, geographic, and socioeconomic factors, to name a few. Another variable that may cause a disparity between the population composition and frequency of contacts are citizen generated calls for service, which are out of the control of the Department.

In his communication, Mr. Exdell states that survey evidence over many years shows consistently that the use of marijuana among black and white persons in the U.S.A. is roughly the same. Johnson said that is entirely possible. However, the study cited by Mr. Exdell does not have a named author and it does not indicate whether or not it was peer reviewed. Johnson referred to a section of the semi-annual USD 383 survey of students which addressed marijuana use. The USD 383 survey indicated that black survey participants were 65% more likely to have used marijuana in their lifetime and 62.9% more likely to have used marijuana in the last thirty days.

Johnson also said he could not think of an instance of a pretextual stop that had not been based on specific intelligence, and throwing a dart at the wall to see if you hit the target is not an effective manner of drug enforcement.

Johnson stated that it is patently incorrect of Mr. Exdell to state that RCPD administration refuses to bring the evidence of RCPD racial bias to the attention of its law enforcement officer staff. Johnson said that at a minimum he has attended racially bias policing training at the Department eight times. The Department is very cognizant of explicit and implicit biases. The Department repeatedly trains all personnel on fair and impartial policing.

Albert Lee, Resident, Manhattan, KS, commented on Police Chief Wydra's decision to end pretextual stops in Hamden, Connecticut. Lee stated that the end of traffic stops for minor violations, specifically broken equipment, in Hamden, Connecticut reduced the number of black motorist stops from 25% to roughly 8%. He noted that there have been national studies conducted which attempted to control for the perceived income of the motorist based on the type of car, location, and reported income. Studies have also compared arrest rates within specific smaller locations, and the results still correspond with the larger statistics nationwide. Therefore, it is unlikely that those are strong factors that could account for the huge disparity.

Elsa Morgan, Resident, Manhattan, KS, shared her experience with the Riley County Police Department wherein she believes she was racially profiled after she and her daughter were pulled over because her license plate light was out. She asserted that the officer pulled her over because of the tinted windows and rims on her vehicle. She stated that the officer could not see who was in the vehicle. Once the officer approached the vehicle and saw she was a black female with her two daughters and grandson, the license plate light was no longer important. The officer did not ask for her insurance card, nor did he issue her a citation or warning. Morgan believed that once the officer saw that there weren't black males in the vehicle, the traffic violation became a nonissue. If it were an issue, she would have received a citation.

Will Chernoff, Resident, Manhattan, KS, stated that he was responsible for calculating some of the statistics presented by the CEJ. He said that the data may not be perfect data. The data that was used was reported by RCPD to the Federal Bureau of Investigation Uniform Crime Reporting program which is made publically available. In addition, the population data that was used is made publically available by the United States Census Bureau. Chernoff stated he agrees that it may not be the best

data for understanding the situation, but as far as the general public has access, it is the highest quality of data available. If there is better data then they should explore that data. He noted that one of the things they are trying to do is come together to work on the issue, which is to remove the disparity from the community.

Margaret Conrow, Resident, Manhattan, KS, echoed the comments made by Chernoff. She said that the issue exists and it should be not only addressed, but solved. If it can be solved with little or no danger to the community, as seen in Hamden, Connecticut, then the Law Board would be advised to try it.

Kevin Bryant, Resident, Manhattan, KS, invited members of the Law Board and the public to attend the Conversations on Race Reconciliation: A Community-Based Dialogue hosted by the Martin Luther King Jr. Committee. The discussion will take place October 30, 2017 from 7:00 p.m. to 9:00 p.m. at the St. Thomas More Catholic Church. The purpose of the event will be to discuss issues raised and possible initiatives to improve issues of race relations.

Taylor Stephens, Resident, Manhattan, KS, did not wish to give his correct name, but rather use Taylor Stephens as a legal pseudonym. Stephens stated that the discussion before the Law Board should not be whether or not racism and racial bias exist within the police department. It is a fact that they do exist. One of the ways in which law enforcement institutions enact racism is through pretextual stops. Pretextual stops allow officers, specifically racist police officers, to conduct violence and place the financial burden of police stations predominately on people of color because of the leniency that the stops afford them.

Schoen noted that in a microcosm, the discussion presently taking place has been had at the state level. At that time, the governor had a Racial Profiling Task Force on which former RCPD Director Michael Watson served. They discussed what to do about data capture. The discussion group was comprised of law enforcement executives from around the state and representatives from the Kansas African American Affairs Commission. The discussion was both heated and lengthy. The conclusion they arrived at was that it was going to cost well into six, if not seven figures for data collection due to the complexity of the questions.

Reddi thanked everyone for taking time out of their busy schedules to address the Law Board. She explained that there is always room for improvement. She is blessed to live in a safe community where local law enforcement does an exceptional job. She recalled that progress was made with respect to the mental health co-responder program because the conversation kept happening year after year. Anytime an audience like this shows up to a meeting it means there is a problem that needs to be discussed, and data doesn't always cover it. The issue of race has been present for generations. It is a trust and perception issue that has to be worked through slowly. It is an education process. Riley County Police Department officers have been working closely with members of the community, publically engaging them to try to build those relationships. When you attempt to build relationships you are trying to get at a hundred years of untrustworthiness. It takes time to earn that trust back.

Stoney extended her appreciation to those who attended the meeting to share their concerns. She encouraged everyone to attend the Conversations on Race Reconciliation: A Community-Based Dialogue on October 30, 2017.

Following additional discussion and comments from the Board, a consensus was reached to create a committee to identify the data factors that the Department presently captures which would be of value

to the discussion, and present the information to the Law Board. The committee will be comprised of representatives from the CEJ, RCPD and Law Board. Dodson, Rodriguez, and Stoney agreed to serve on the committee as representatives of the Law Board. The Coalition will nominate two members.

Wilson suggested collecting information from arrests and citations by time of day, age, location, race, why the person was stopped, etc.

Chairman Beardsley gave the committee until December to meet and provide a snapshot of the problem.

M. Executive Session: At 2:15 p.m. Wilkerson moved to recess into Executive Session until 2:30 p.m. for the purpose of discussing non-elected personnel matters and attorney client privilege. Rodriguez seconded the motion. Beardsley polled the Board and the motion passed with Dodson, Wilson, Reddi, Stoney, Rodriguez, Wilkerson and Beardsley voting in favor, and no one voting against. The motion passed 7-0.

At 2:30 p.m. the open meeting reconvened.

At 2:30 p.m. Wilkerson moved to return to Executive Session until 2:35 p.m. for the purpose of discussing non-elected personnel matters. Stoney seconded the motion. Beardsley polled the Board and the motion passed with Dodson, Wilson, Reddi, Stoney, Rodriguez, Wilkerson and Beardsley voting in favor, and no one voting against. The motion passed 7-0.

At 2:35 p.m. the open meeting reconvened.

N. Affirmation or Revocation of Discipline: Wilkerson moved to affirm the Director's disciplinary actions. Wilson seconded the motion. Beardsley polled the Board and the motion passed with Dodson, Wilson, Reddi, Stoney, Rodriguez, Wilkerson and Beardsley voting in favor, and no one voting against. The motion passed 7-0.

O. Adjournment: The October 16, 2017 Law Board Meeting adjourned at 2:35 p.m.