

On May 5, 2009, the San Jose City Council endorsed the partnership between the Consortium for Police Leadership in Equity (CPLÉ) and the San Jose Police Department regarding research designed to improve racial equity in policing. Since this time, CPLÉ has worked with the San Jose Police Department and San Jose City officials on a Memorandum of Understanding and proposed plans of research. CPLÉ is pleased at the continued progress that has been made. CPLÉ is pleased to report the following updates regarding its involvement and research with the San Jose Police Department.

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1. *Memorandum of Understanding (MOU)*

The MOU, a legal document which lays out the scope of work to be undertaken by the CPLÉ, was officially signed and ratified by the University of California (serving as the academic and legal home of the CPLÉ) and the City of San Jose in August of 2009. The scope of work in the MOU indicates the specific research to be conducted by CPLÉ researchers and the expectations from both the CPLÉ and San Jose Police Department. The CPLÉ will conduct research intended to better inform the SJPD and the city of San Jose with respect to ways in which SJPD might ensure the equitable delivery of police services. The CPLÉ will conduct a number of research projects to achieve these goals:

First, the CPLÉ will assess SJPD's current police department statistical reports and data archiving practices. The CPLÉ will advise SJPD on recommended formats for collecting and presenting data to the Department, Public, and the City. Formatting can be used for future reports to ensure clear communication about equity issues regarding the San Jose community and San Jose City officials. We will have a report on this later in the update as well.

Second, the CPLÉ will conduct a research project designed to gauge the role of race in suspect stops and arrests. This research will be conducted with a focus on comparing so-called "discretionary" stops (e.g. public intoxication arrests, resisting arrest, and disturbing the peace arrests) vs. so-called "nondiscretionary" stops. We will also report preliminary findings on these initial analyses later in the update.

Third, the CPLÉ plans to conduct similar analyses of use of force and victims of crimes among major demographic groups in San Jose. This data will allow the CPLÉ research team to investigate aggregate trends and group-based disparities as well as the

role of officer-level discretion and/or bias in producing these outcomes. CPLE researchers will also measure psychological factors of officers that consent to participate in research. These psychological factors will include measures of officer racial bias, concern with appearing prejudiced, insecure masculinity, anti-Latino and anti-Black dehumanization, and attribution patterns for non-White residents. These data may then be paired with consenting individual officer suspect stops and use of force histories. The goal is not to reveal any biases of individual officers, as officer identities will be kept confidential. Rather, the goal is to understand what relationship, if any, officer attitudes have on officer behavior.

Fourth, the CPLE will conduct research on factors that may exacerbate any observed inequalities in treatment and outcomes. The specific focus of this project will be an investigation of how officer and suspect racial phenotypic stereotypicality, expectations of hyper-masculine responses (regarding an officer and/or a suspect), and actual hyper-masculine responses may influence police-community interactions. Using arrest records, booking photographs, and experimental designs, CPLE researchers will assess the role of racial phenotype, expectations of masculine displays, and actual masculine displays in the creation of racial inequality.

Finally, the CPLE will conduct research with the goal of ensuring positive communication between the racially and ethnically diverse communities of San Jose and the SJPD. This scope of work may be modified with the consent of all involved parties to respond to shifts in the short-term and long-term goals of the San Jose/CPLE collaboration.

Shortly after the signing of the MOU, the San Jose Police Department sent over 10 years of data and statistics to the CPLE for review, including suspect arrest and victim data for different demographic groups in San Jose across the full range of felony and misdemeanor offenses. CPLE researchers have begun the process of reviewing the data and intend to provide an update on our preliminary analyses during the scheduled November 19 quarterly update.

2. Introduction for Kimberly Barsamian Kahn

Kimberly Barsamian Kahn, M.A., C.Phil., has been selected as the Site Coordinator for San Jose. Ms. Kahn is a doctoral Candidate in Social Psychology at the University of California, Los Angeles. In her role as Site Coordinator, Ms. Kahn will manage and oversee the multiple research projects being conducted by CPLE in San Jose, while also serving as a contact between CPLE, the San Jose Police Department, San Jose City officials, and San Jose community members. CPLE created this position to resolve the extensive time demands and travel requests by San Jose of CPLE. Ms. Kahn will be representing the CPLE at community meetings and city events whenever possible.

Because the San Jose city government has initiated public dialogue on the issue of public safety, Ms. Kahn will be made available when possible to act as an observer. This

will allow Ms. Kahn to keep CPLE researchers informed and relay questions from community groups to other CPLE researchers. Ms. Kahn will not answer extensive questions regarding the CPLE's research and involvement in San Jose during city-initiated events. She will record any questions by the community at city update meetings and will communicate said concerns to the CPLE Directors for specific comment and response.

The CPLE places significant value on the wisdom that comes from the experiences of local communities. Ms. Kahn will ensure that broad-based community concerns are communicated to the CPLE and considered when research questions and methods are designed and implemented. The Scope of Research that CPLE will undertake at the San Jose site directly reflects the ideas, suggestions, and concerns of community members, city officials, and San Jose Police Department.

There is an introductory memo outlining Ms. Kahn's background credentials that has been made available, and any interested parties should be encouraged to contact her if they wish to contribute to the research process. Please contact her at outreach@policingequity.org

3. Funding

On November 6, the Russell Sage Foundation informed the CPLE that they would fund the next two years of CPLE infrastructure and proposed research. We anticipate that several San Jose-specific research projects will be funded from this grant, which totals approximately \$344,000. No researcher salaries or benefits were requested or received for this grant.

4. San Jose Policing data and record keeping

As previously indicated, shortly after the MOU was signed, the San Jose Police Department sent the CPLE a significant amount of requested data. CPLE researchers received 10 years of data from San Jose indicating the number of arrests, suspects, and victims related to all felony and misdemeanor crimes, further broken down by different racial groups. In addition, the San Jose Police Department sent similar data from 10 comparable cities: San Francisco, San Diego, Sacramento, Long Beach, Fresno, Bakersfield, Oakland, Los Angeles, Los Gatos, and Santa Clara. These cities were selected on the basis of location, population demographics, police services administered, and crime rates. The CPLE requested this data in order to compare racial disparities in arrest rates across similarly situated cities. After reviewing the initial data sent by the San Jose Police Department, the CPLE subsequently requested additional data from the comparable cities (the CPLE received data from 2007, but would like to see trends over time across the comparable cities).

In addition to conducting this initial review of racial distribution of arrests, several CPLE researchers intend to compare the racial distribution of officer-initiated

arrests to arrest resulting from citizen calls for service. Though most law enforcement would argue that there is no such thing as a discretionary arrest—all arrests should stem from clear violations of law—and many self-initiated police actions are both life-saving and free from bias, an analysis that includes who initiated the police contact may prove a useful tool in identifying patterns of police behavior.

However, pursuing this research has been frustrated by a data complication that, while not unexpected, will require sizeable resources to overcome. Specifically, San Jose, like many police departments does keep data on whether a suspect interaction resulted from a call for service (Type 1) or officer initiation (Type 2). However, like the majority of large police departments, San Jose does not merge this information with incident data that is archived and aggregated. Consequently, incidents must be merged with source of complaint information by hand if researchers are to gain access to the data in analyzable form.

Again, this is a common data problem and not without reason. Law enforcement executives have long been concerned that tracking self-initiated stops in this manner might lead to patrol officers “de-policing.” That is, officers might be discouraged from investigating potentially dangerous situations or people for fear of casting themselves or their department as racist. This de-policing, it is feared, may result in increased crime, loss of public trust, and reduced officer morale.

The benefits of collecting this data are that you have the ability to gauge the relative effectiveness and equitable distribution of law enforcement services that stem from officers’ instincts and training. It may also be the case that collecting this data could serve as an early warning system on both equity-related issues, and a host of other concerns (e.g. excessive use of force and citizen complaints).

For the sake of research clarity, the CPLE recommends pairing existing incident data with source of contact initiation data (i.e. Type I and Type II data) in an effort to determine whether or not the data collection and aggregation system should be amended in kind.

5. Preliminary data analysis

Upon receiving the initial data from SJPDP, the CPLE was tasked with two tasks simultaneously. First was to identify any patterns of racial disparities in so-called “discretionary” versus “non-discretionary” arrests. Second was to investigate possible improvements in the way the SJPDP collects and reports data. While the San Jose Police have stated that there are no crime types that are entirely discretionary, a majority of community respondents who have contacted the CPLE disagreed, and identified a number of arrest categories where they felt that officers had more discretion than in other categories. For example, many community members felt that officers have more discretion when deciding to arrest an individual for being drunk in public than when arresting someone for assault and battery. Indeed, much of the public discussion

regarding potential bias in officer conduct has centered on these so-called discretionary types, namely drunk in public and disturbing the peace arrests of Hispanics.

To examine the role of discretion in potentially producing racially biased outcomes, we identified eight such “discretionary” misdemeanor crimes: drunk in public, joy riding, disorderly conduct, disturbing the peace, vandalism, marijuana, glue sniffing, and other drugs. We next chose eight misdemeanor crimes that community members felt offered less room for officer discretion but were matched in terms of the frequency with which citizens are arrested for them: assault and battery, driving under the influence, petty theft, lewd conduct, indecent exposure, malicious mischief, trespassing, and gambling. The 16 arrest categories (the 8 “discretionary” crimes plus the 8 “non-discretionary” crimes) represent approximately 2/3rds of the misdemeanor arrests each year in San Jose. We subsequently conducted a series of analyses comparing the racial distribution of so-called “discretionary” arrests with other arrest categories. That is, if more arrests are made for a particular ethnic group on types of crimes that are considered to be discretionary, many community respondents felt this would indicate that SJPD officers target particular racial groups when making arrests.

To test this hypothesis, we first compared the 8 “discretionary” arrests versus the 8 “non-discretionary” arrest categories for the percentage of Hispanic suspects arrested in each. These initial analyses do not reveal a larger pattern of bias based on officer discretion at this aggregate level. Specifically, Hispanics were arrested at a rate of 53.98% for the 8 discretionary crimes compared to a rate of 53.87% for the eight “non-discretionary” crimes. This difference was not statistically different. We next compared our 8 “discretionary” crimes to the full set of remaining misdemeanors—all of which were rated as “non-discretionary” by our community informants. These categories included: misdemeanor manslaughter, misdemeanor burglary, check fraud, marijuana possession, annoying/molesting a child, prostitution, contributing to the delinquency of a minor, vandalism, and misdemeanor weapons possession charges among others. This set included the previously identified 8 nondiscretionary misdemeanors indicated above, plus 16 other offenses, for a total of 24 crime types. Again, we found similar results, such that Hispanics were arrested at a rate of 54.21% (as compared to 53.98% for the “discretionary” arrests). Again, the difference between “discretionary” and “non-discretionary” arrests is not statistically different from chance.

Next, we conducted a series of analyses to determine if the arrest rates for Hispanics have increased across time for particular arrest categories. First, we examined whether the percentage of Hispanic suspects arrested for the “discretionary” categories had increased over the 10 year period of data we received. Regression analysis did not indicate a significant trend in disproportionate arrest rates during time period. The percentage of Hispanics arrested in these categories ranged from a low of 50% to a high of 57%. The CPLE will continue to track these trends throughout time and will revisit these analyses when the additional 10 years of data is received. Lastly, we also tracked changes in drunk in public arrests for Hispanics across the 10 year time span. We chose to focus on drunk in public arrests in response to public concern about potentially

disparate arrests for this offense. Again, regression analyses yield no significant increase in the arrest rates for Hispanics across the 10 year span. We observed a similar pattern of arrest rates ranging from 55% to 58% during the observed time period. Overall, these initial time series analyses do not indicate a trend of increasing rates of Hispanic arrests even as the demographics of San Jose seem to be trending towards increasing numbers of Hispanics in the population.

Finally, the CPLE examined which particular offenses have the highest rate and which have the lowest rate of arrests for Hispanics. Understanding which arrest categories tend to reveal higher percentages of Hispanic arrests can inform future analyses and serve as an important indicator when monitoring police equity. The five categories with the highest rate of arrests for Hispanics across the 10 year time span are: disturbing the peace (62%), vandalism (61%), DUI (59%), hit and run (57%), and failure to appear (non-traffic violation) (57%). None of these were considered “discretionary” arrest categories. Conversely, the categories with the lowest percentages of Hispanic arrests were: obscenity charges (5%), gambling (28%), misdemeanor manslaughter (31%), child support violation (32%), and prostitution (40%). Importantly, none of these were considered “discretionary” arrest categories either. This suggests that none of the arrest categories that most concerned citizens and captured media attention are outlier categories with regard to the arrest of Hispanics. The CPLE will continue to track the arrest statistics for these categories as part of our ongoing research efforts.

Next, we replicated these analyses in the 10 comparison cities that were provided to us by the San Jose Police Department. Similar to the results found in San Jose, there is little evidence that there is more bias in so-called “discretionary” arrests than “non-discretionary arrests.” Specifically, comparing the data on arrests for Hispanics, we did not observe a higher rate of arrests on the 8 “discretionary” offenses compared to the 8 “non-discretionary” offenses or compared to the full “non-discretionary” set in 8 of the 9 comparison cities. (Note: Hispanic data missing for one city). To reiterate a previous point, these preliminary analyses do not mean that no bias exists within these police departments. Examining incident based data may reveal alternate patterns as well as examining the aggregate data using different metrics. Further, these preliminary analyses involve only one year of data from 2007. The CPLE has requested more data from each of these cities to conduct further comparisons.

Additionally, these are preliminary analyses based on citizen perception as opposed to a careful review of the role of discretion in arrests made by category. Among the next steps of the CPLE will be to use these initial findings to build a more comprehensive analytic approach to aggregate data collection and reporting.

These initial analyses do not indicate a pattern of higher racial bias within “discretionary” compared to “non-discretionary” arrest categories at an aggregate level. This is not to say, however, that no racial bias exists within the San Jose Police Department. This is why we have sought (and received) funding to investigate the racial attitudes of individual officers, and link that data with officer performance data.

6. Community concerns

CPLE has conducted a number of interviews with San Jose community members and patrol officers. Interviews have been granted to any and all individuals who have sought them. In addition, the CPLE has contacted leaders in the Hispanic, Asian, and Black communities, and asked for recommendations for interview candidates from city officials and previous interviewees. Though these interviews are ongoing, a number of themes have emerged:

First, there is significant concern among Black and Hispanic community members that the San Jose Police Department is a haven for racially biased police. When asked, a majority of Black and Hispanic respondents do not believe that racism pervades the police department. Rather, they have expressed concerns that racially prejudiced officers are protected by the department—implicating the department in the actions of a minority of officers. A significant minority of community respondents and a majority of Black and Hispanic respondents expressed dismay at their perception that the SJPD would not admit to racial bias on its police force and frustration with the perception of a defensive tone from the chief. This same group felt that there was room for SJPD to improve community perceptions that it is a responsive and transparent organization.

Second, a significant minority of community members spontaneously indicated the need for more direct communication with chief Davis. This group expressed concern that chief Davis was either not hearing their concerns or not hearing those concerns as legitimate.

Third, a majority of Hispanic community members also indicated their concern that the individuals speaking out against the SJPD and chief Davis did not always represent community views. They indicated a desire to have a more representative group of citizens at the table to negotiate with police. This concern was also echoed by a majority of patrol officers who expressed concern about the possibility that a “vocal minority” did not speak for the plurality of any racial community in San Jose, and that, consequently, the voices of those communities were not being represented accurately in the public debate.

It is important to note that these themes do not represent empirical science. However, interview themes should provide direction for future data collection from community members and may also inform short-term planning that must be conducted in advance of empirical certainty.

7. Recommendations

Though the research process is in the most preliminary of stages, the CPLE’s preliminary efforts have resulted in three clear recommendations to the SJPD. These recommendations are not made considering in full consideration of political or financial

consequences, but informed by the data collected and the empirical research available on the topic:

A. Change racial arrest data reporting structure:

While CPLE researchers are still in the process of identifying patterns of officer discretion across arrest categories, it is possible for law enforcement and community groups to define a class of arrests *a priori* and keep track of them separately from other arrest rates. Comparable arrest categories can then be chosen—ideally matched on total number of arrests and regional distribution of arrests. The SJPD can then make available to the public the relative proportion of Hispanics (or other groups) arrested in high “discretion” v. low “discretion” categories with the goal of both allowing community members to see how these statistics change over time and how arrest categories of particular concern compare to arrest categories that are less troubling to community members. Once community members and law enforcement agree on the categories of concern, the CPLE would be happy to assist in the construction of an “equity index” that could simplify the publication of data.

Again, any changes in the reporting of data consistent would not be a true measure of officer or departmental bias. Rather, they would serve as an improvement in giving community members informative data on how police arrests are distributed across racial groups. It would also provide a more informative metric for tracking racial progress in law enforcement over time.

B. Investigate Type I v. Type II data merging:

As mentioned in Section 4 above, the CPLE recommends that the SJPD provide the CPLE information on whether arrests result from officer-initiated or a citizen call for service. This will permit a preliminary analysis of whether or not this data is diagnostic of the racial distribution of police behavior as well as permitting more comprehensive analyses of the principal research question outlined by the San Jose CPLE MOU.

C. Open a dialogue on community/police executive communication:

Given the themes that have emerged from preliminary community interviews, it seems apparent that a number of Black and Hispanic community members desire a mechanism to communicate more directly with the chief. While the makeup of that mechanism is more a political consideration than a scientific one, it seems reasonable to suggest that police/community trust and cooperation might benefit from opening a dialogue regarding how community/police executive communication might be improved—and whom might best represent the community.