

# **Law Enforcement, Community Relations, and the Local Government Lawyer: An Ethical Responsibility**

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# Defining Racism – Merriam Webster

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- **Definition of *racism***
- **1:** a belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race
- **2a:** a doctrine or political program based on the assumption of racism and designed to execute its principles
- **b:** a political or social system founded on racism
- **3:** racial prejudice or discrimination

# Defining the Problem – America’s Broken Promises of “Equal Justice”

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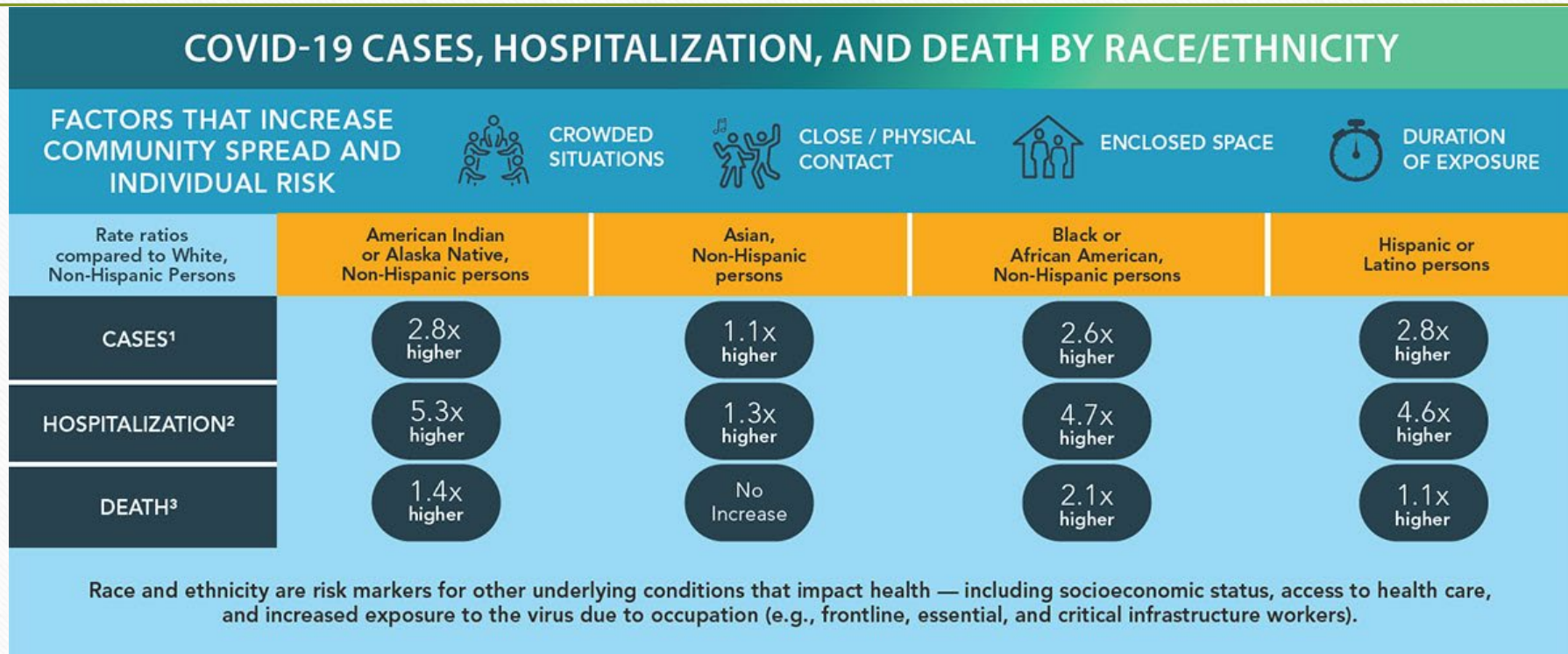
- A Monmouth University poll released in June 2020 found that 76% of Americans (including 71% of white people) called racism and discrimination “a big problem” in the United States (up 26% since 2015).
- According to a recent Gallup poll, 71% of black Americans say they know "some" or "a lot of" people who were treated unfairly by the police, more than twice the rate among white Americans. Half of black adults report knowing "some" or "a lot of" people who were unfairly sent to jail compared with 13% of white adults.
- For Hispanic Americans, the figure is higher than for white Americans, but lower than black Americans at 48%.
- 84% of black adults said that, in dealing with police, blacks are generally treated less fairly than whites; 63% of whites said the same.

# Defining the Problem – America’s Broken Promises of “Equal Justice”

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- A study of more than 100 million traffic stops found that police stop black motorists 20% more than white and Hispanic motorists.
- In 2018, according to BJS, black people comprised 33% of the federal prison population (they make up 12% of the U.S. population) whereas white people make up 30% of the prison population (and they account for 63% of the population).
- According to BJS and USCCR, police are twice as likely to use force on people of color and twice as likely to use deadly force on black people as white people.

# Context of Racism in COVID (Data from 2020)



# COVID 2021 Racial Disparity Data

Rate ratios compared to White, Non-Hispanic persons	American Indian or Alaska Native, Non-Hispanic persons	Asian, Non-Hispanic persons	Black or African American, Non-Hispanic persons	Hispanic or Latino persons
Cases <sup>1</sup>	1.7x	0.7x	1.1x	1.9x
Hospitalization <sup>2</sup>	3.4x	1.0x	2.8x	2.8x
Death <sup>3</sup>	2.4x	1.0x	2.0x	2.3x

# Calls for Police and Criminal Justice Reform

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- Activists are seeking to address systemic racism in policing and elsewhere, through:
  - More accountability and oversight of police. (CRBs, ending QI)
  - Calls to demilitarize the police
  - “Defunding” some of the police by shifting services police traditionally handle to social services and other areas
  - An outright abolition of law enforcement.

**Law Day /  
IMLA's  
Founder  
and IMLA's  
Mission**

- Purpose was the rededication of our “most solemn responsibility, the responsibility of preserving and passing on to the generations which will follow us as citizens of the United States of America the heritage of individual human freedom and **equal justice under the law...**”



# State Court Statements on Racism

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- At least 26 state courts and/or Chief Justices of State Supreme Courts issued statements regarding racism and the court system after George Floyd's death.

# Supreme Court of New Mexico Statement

- As you walk into the courtroom at the New Mexico Supreme Court... indelibly carved into wood are the words, "**Dedicated to the Administration of Equal Justice Under Law.**"
- “This trust-that each New Mexican will be treated fairly under the laws of this state-is imperative to the work of the courts. Without it, the justice system erodes and crumbles. But we cannot take your trust for granted. **We must eliminate the deleterious effects of the poisons of prejudice, bias and racism.** We must serve all persons equally, regardless of race, ethnicity, gender, sexual orientation, income, language, ability, or education.”

Supreme  
Court of NM  
Statement  
Continued...

- “To achieve this goal, the judiciary will engage in a critical examination of the institution. We need to acknowledge our shortcomings and recognize our conscious and unconscious biases. **This reflection is the first step to lasting change.** But actions speak louder than words.
- To that end, the New Mexico Supreme Court announces the establishment of the Commission on Equity and Justice...”

# Georgia Chief Justice Melton

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- The prominence and horror of the George Floyd murder does point to continued divisiveness. But, at the same time, it also points to unparalleled unity as exhibited by unprecedented numbers of people of all ages, races, and walks of life who are: (1) expressing outrage at the continued unnecessary violence by some police officers against African Americans; and (2) asking **‘What can we do to make things better going forward?’**...We are grieving right now. And that is proper and healthy. I don’t know if we have ever grieved like this before. But by grieving together, coming together, and supporting one another through all of this, I know that we will come out of this better than we were before. And for that I am encouraged.



# Colorado Principles of Professionalism

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- “The hallmark of a civilized society is its ability to maintain a legal system that is fair, effective and efficient. As lawyers, we have a predominant role in assuring that the legal system fulfills these goals.”
- “**XI. Principle:** A lawyer owes to the public a devotion to the public good and to public service; a commitment to the improvement of the administration of justice...”

# Local Government's Ethical / Moral Duties in the ABA Model Rules

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- ABA Model Rules of Professional Conduct Preamble and Scope, Part 6 indicate lawyers
  - “should seek improvement of the law, access to the legal system, **the administration of justice** and the quality of service rendered by the legal profession.”
  - “further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. **A lawyer should be mindful of deficiencies in the administration of justice.**”

# Colorado's Preamble: A Lawyer's Responsibility

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- [6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, **the administration of justice** and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. **In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system** because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. **A lawyer should be mindful of deficiencies in the administration of justice** and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. ...

# Colorado Preamble: A Lawyer's Responsibility

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- [7]“Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, **a lawyer is also guided by personal conscience** and the approbation of professional peers. **A lawyer should strive to attain the highest level of skill, to improve the law** and the legal profession and to exemplify the legal profession's ideals of public service.”
- [13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.



## ABA Rule 2.1 / CO Rule 2.1

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- In representing a client, a lawyer **shall** exercise independent professional judgment and render candid advice. In rendering advice, a lawyer **may** refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

# ABA /CO Rule 2.1 Comments

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- [1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. **Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront.** In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

# CO Rule 2.1 Comments

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- “Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost **or effects on other people, are predominant.** Purely technical legal advice, therefore, can sometimes be inadequate ...It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, **moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.**

# ABA Rule 1.2

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- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

# Rule 1.3 – Diligence (Comments)

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- A lawyer shall act with reasonable diligence and promptness in representing a client.
- A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, **and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.** A lawyer is not bound, however, to press for every advantage that might be realized for a client.

# Ethics / Professionalism Takeaways

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- Consider whether the issue of systemic racism is a moral issue that government lawyers should be mindful of in advising their clients.
- Ask yourself whether government lawyers have a special role as community leaders in striving to improve issues surrounding systemic racism and police / community relations.
- The advising of moral considerations is permissive, not mandatory.
- Ultimately, the client has the authority to decide the objectives and an attorney needs to be mindful not to usurp that authority when advising on non-legal matters.

# Possible Solutions Being Discussed

- Policy Changes
- Legislation (Abolishing QI)
- Training (Implicit Bias, De-Escalation, Duty to Intervene)
- Civilian Review Boards
- State / Federal Oversight of Police Shootings
- Defunding the Police
- Incarceration Practices

# U.S. Commission on Civil Rights 2018 Report

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- Makes 4 key recommendations to improve police / community relations and reduce the likelihood that officers need to use force in their interactions with the public.
  - 1. US DOJ should return to the use of consent decrees to ensure constitutional policing standards
  - 2. DOJ should support local efforts to develop policing practices that focus on building community trust.
  - 3. Congress should fund grants that would help reduce incidents of excessive force (training)
  - 4. Congress should fund grants that support effective external police oversight and research



# State Level Action

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- Between May 2020 - May 2021, at least 67 police reforms have been signed into law in 25 states according to NCSL.
- The laws address neck restraints and chokeholds; police-worn body cameras; disciplinary and personnel records; independent investigations of officer conduct; use of force restrictions; qualified immunity; and no-knock warrants.
- At least 13 states enacted restrictions on officer use-of-force according to the NCSL data.

# Police Policy Changes: Prohibition on Neck Restraints / No Knock Warrants

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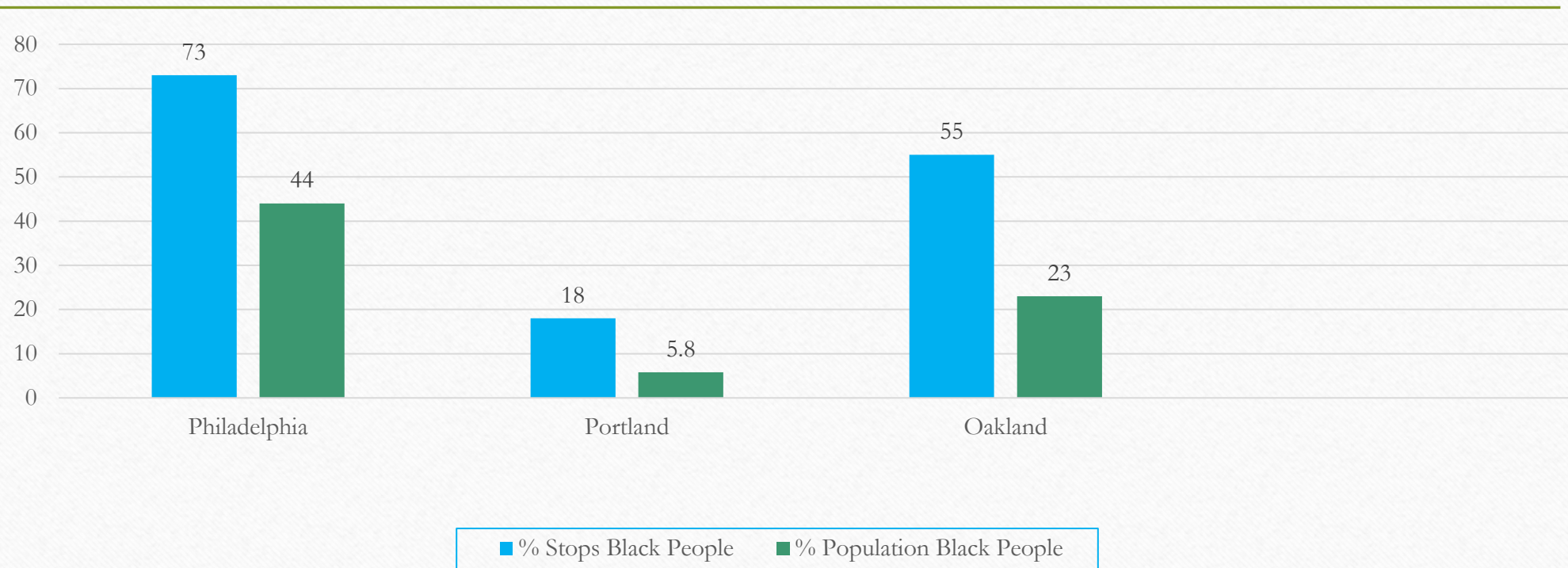
- 62% of the Nation's 65 largest police departments banned or limited neck restraints as of September 2020.
- Colorado legislature banned chokeholds in 2020. 17 other states also ban them.
- Reno Police Department said it would prohibit restraint techniques that restrict breathing. However, Reno Chapter of the NAACP was not satisfied with this move because some of the new policies already existed in some form already.

# Traffic Stops

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- Philadelphia, Portland, Oakland passed ordinances to reduce / eliminate police stopping motorists for minor traffic offenses, citing disproportionate rate that black people and Latinos are stopped for these offenses.
- E.g., under the Driving Equality Bill, police officers in Philadelphia would no longer be able to stop a driver for a trivial code violation that does not pose a risk to public safety, such as tinted windows or a missing taillight. However, officers would still be able to stop a driver for dangerous violations, such as driving while intoxicated / speeding.

# Traffic Stop Data



# Albuquerque Use of Force Standard

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- Provides for a lower standard than *Graham v. Connor*.
- “Officers who use force **shall use the minimum amount of force** that is reasonable, necessary, and proportional based on the totality of the circumstances confronting the officers in order to bring about a lawful objective.”

Implicit Bias Training

De-escalation Training

Training on Duty to Intervene

**Training**

# Police Training /Accountability Messaging

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- “Police officers have the difficult and admirable job of providing crucial services to the communities they protect and serve. Their job sometimes puts them in harm’s way and may require the use of force. Accordingly, police officers must operate with the highest standards of professionalism and accountability.”

# Implicit Bias: Definition

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- “Implicit bias describes the automatic association people make between groups of people and stereotypes about those groups. Under certain conditions, those automatic associations can influence behavior—making people respond in biased ways even when they are not explicitly prejudiced. ... Implicit racial bias has given rise to a phenomenon known as “racism without racists,” which can cause institutions or individuals to act on racial prejudices, even in spite of good intentions and nondiscriminatory policies or standards.” – National Initiative for Building Community Trust & Justice



# Implicit Bias Continued

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- “Research shows that prejudice and discrimination are not necessarily due to holding explicit or overt racist views or racial animus. Rather, due to the historical legacy of racism, these ideas have become embedded in our institutions and society, and these ingrained ideas are practiced unconsciously in our minds and may be acted upon without malice.” USCCR Report 2018

# Implicit Bias in Policing

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- Studies show that law enforcement officers hold many of the same biases as the general public, and in implicit bias tests, patterns are nearly universal. Black people (especially black men) are more often associated or quickly paired with being “threatening,” and this tends to hold true regardless of the race or ethnicity of the person taking the test.

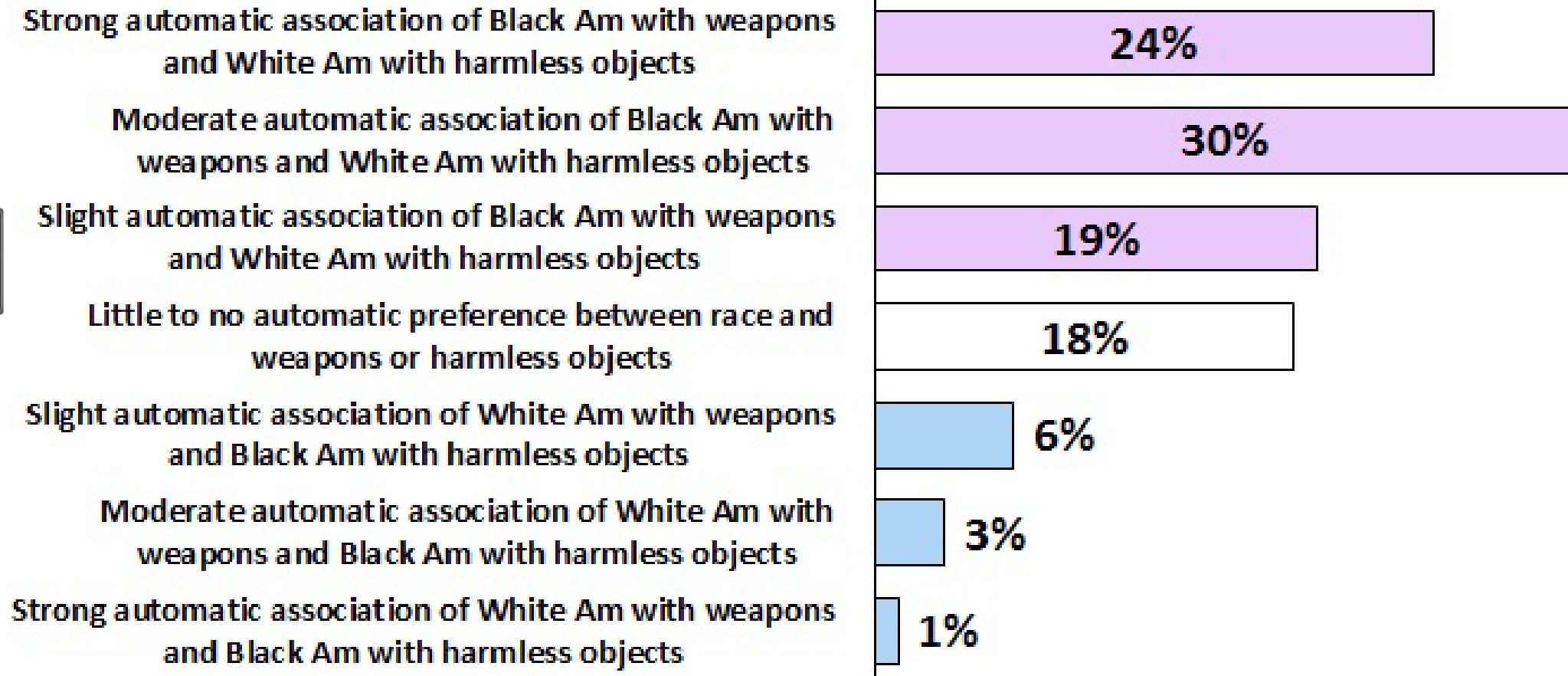
# Spokane, Washington Implicit Bias Research

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- In a study testing implicit bias with 80 officers from Spokane, Washington, researchers found that 96% of the officers demonstrated racial bias.
- They utilized the Harvard Implicit Association Test that is designed to detect racial bias by linking pictures of black and white faces with pictures of weapons. Results from this test showed that 78% of the officers strongly to moderately associated black people with weapons, and 0% associated white people with weapons.

# IAT Results

## Percent of web respondents with each score



This distribution summarizes 530,817 IAT scores for the Race-Weapons task completed between April 2004 and December 2015

# Plant and Peruche Study

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- Participants were 50 police officers from Florida (83% male; 84% White, 10% Black, 2% Native American, and 4% Hispanic).
- In a “shoot-don’t shoot” simulation, officers were initially more likely to mistakenly shoot unarmed black suspects compared to unarmed white suspects. However, the study found that after repeated exposure with the program and extensive training—in which race was unrelated to the presence of a gun—this bias could be eliminated.

# + / - to Implicit Bias Training

- Research demonstrates that training can result in improvement in implicit bias and therefore hopefully fewer use of force incidents by police.
- Cost can be a negative factor. Also, preliminary research suggests that even after officers go through training, unless it is regularly practiced and correctly learned, biases may eventually resurface, especially in high stress situations.
- One police chief explained: “[T]he officers initially were unhappy. They felt that I had hung them out to dry, and that people were pointing at them and calling them racist. No one was doing that, but that is how they felt.”

# Rule 2.1 comments

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- “Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. **It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice.**”
- When you see information like the Spokane study and Plant and Peruche study, do you believe there is any moral or ethical obligation to your client and/or the public to counsel them on the issue of implicit bias in policing?

# De-Escalation / Crisis Intervention Training

- De-escalation training focuses on trying to slow down actions before they escalate into a situation where an officer may feel that force is necessary.
- Tactical training that teaches them how to create distance, time and space, and how to interact with people.
- Trainers teach them that only one officer should speak to a suspect—rather than multiple officers shouting directives—to avoid confusion about which directives to follow.
- An especially useful tool in situation involving mental health crises as well as mass protests.



# Best Practices for Crisis Intervention Training from USCCR Report

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- 1. Educating officers on the various mental health diagnoses and co-occurring disorders, with an emphasis on their medical origins.
- 2. Distinguishing between behavior that might be unconventional or not related to a disability from situations where the police should intervene and assist the individual in getting to a treatment setting.
- 3. Actively uses scenario-based methodology to teach officers the skills of how to de-escalate individuals in crisis.
- 4. Collaborating with mental health providers, individuals with mental health disabilities, and their family members to help officers become knowledgeable about and have access to community crisis and mental health resources

# +/- to De-Escalation Training

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- **Excessive force complaints have fallen** in U.S. cities that have implemented de-escalation training and/or policies.
- However, some police officers and law enforcement officials have cited concerns that the **hesitation** these techniques require may **cost officers their lives**, and a common motto among officers is: “complacency kills.”
- Issues with the cost of the training itself as well as concerns that the extra training pulls officers out of the field and may further strain patrol shifts.

# Duty to Intervene

- Officers who failed to intervene in George Floyd's death charged with aiding and abetting murder.
- Police officers violate the Constitution by failing to intervene when they witness excessive force.

# Duty to Intervene is Clearly Established

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- *Mick by & Through Mick v. Brewer*, 76 F.3d 1127, 1136 (10th Cir. 1996) (concluding police officer who witnessed fellow officer's use of excessive force was not entitled to qualified immunity because the law was clearly established that the officer had a duty to intervene to prevent another official's use of excessive force).
- *Webb v. Hiykel*, 713 F.2d 405, 408 (8th Cir. 1983) (concluding officer was liable for failing to intervene and prevent excessive force even where officers who engaged in that force was the officer's superior).
- *Detris v. Coats*, 523 F. App'x 612, 616 (11th Cir. 2013) (noting officer may be liable for failing to intervene to stop another officer's use of excessive force if the officer is in a position to intervene).

# Colorado SB 217 – Duty to Intervene

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- Makes it a crime for officers to observe misconduct on the job without reporting it.
- Across the state, district attorneys have filed charges since last summer against officers for failure to intervene and failure to report use of force.
- Aurora Police Officer was charged at the end of July with failure to intervene and failure to report use of force (misdemeanors) after body camera video footage appeared to show her standing by while another police officer, beat and appeared to attempt to strangle someone they were placing under arrest.

# Challenges with Duty to Intervene

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- How do you empower officers to intervene when they see a supervisor engaging in misconduct?
- Blue wall of silence – culture shift
- Increased cost – maybe (though you should be training on this in some manner already).

# Moral Questions / Legal Questions

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- Is the blue wall of silence helping anyone?
- Do you think it's an ethical or moral problem?
- Do you think the issue of officer intervention is one that implicates **“deficiencies in the administration of justice”**? (ABA Preamble)
- One way to look at the legal issues: Your client (the local government) will be on the hook for increased damages claims if you do not properly train on this, given that the law is clearly established and now given SB217.

# EPIC: Moral Courage

- Why are officers so quick to risk their lives for their peers, but so slow to stop them before they do something that may end their career? In the words of Mark Twain, why is it that “physical courage should be so common in the world and moral courage so rare”?
- Guiding principles: EPIC, first and foremost, is **designed to protect police officers from losing their job and destroying their personal lives as a result of misconduct** or, in some instances, as a result of a failure to intervene to prevent misconduct by others. But **EPIC is as much designed to protect citizens.** Everyone benefits when potential misconduct is not perpetrated.



# EPIC Training Overview

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- Ethical Policing is Courageous (EPIC): using peer pressure to stop misconduct. Uses scenario-based training.
- Biggest challenge is blue wall of silence. Try to reframe this – protect them by keeping them from doing wrong in the first place, not covering it up later. Encourage them to get help before a bad attitude leads to misconduct.
- In the program, they tell officers “I authorize you, regardless of your rank, to intervene upon me if I am about to do something wrong.”
- Police misconduct has lessened since this was put in place (but other measures have been in place too like body cameras).

# Active v. Passive Bystanders

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- An “active bystander” intervenes when he or she sees something happening or about to happen that is wrong.
- “Passive bystanders” fail to intervene for various reasons. They may be afraid they are interpreting the situation incorrectly, or they think it’s not their job to intervene, or they have a misplaced sense of loyalty to a colleague.
- The EPIC training is designed to attack these “inhibitors” to intervention head-on. Passive bystandership not only allows bad things to happen; it also has a corrosive effect on standards. If no one intervenes to stop misconduct, it creates a sense that the misconduct is normal behavior, resulting in more misconduct.

## Career Benefits

Help officers understand the career-saving benefits of intervention, and the huge risks (including the growing legal risks) of non-intervention.

## Identify Signs

Help officers identify the signs that an intervention is necessary.

## Teach Intervention

Teach officers how to intervene effectively and safely.

## Teach Acceptance

Teach officers how and why to accept intervention respectfully.

## Protect from Retaliation

Protect officers who intervene and those who accept intervention.

# EPIC Training

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- EPIC was instituted in New Orleans in 2016 as part of a federal consent decree. At the time of Floyd's death, only a few police departments besides New Orleans had such peer intervention programs, although Baltimore and Washington, D.C., were working to develop them.
- Since then, the states of Washington and New Hampshire want to implement it statewide, as do Philadelphia; Wilmington and Fayetteville, N.C., and Boston.
- More info on EPIC:  
[https://www.policeforum.org/assets/docs/Subject\\_to\\_Debate/Debate2016/debate\\_2016\\_julsep.pdf](https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2016/debate_2016_julsep.pdf)

# ABLE Training

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- Georgetown Law School in Washington, D.C., has launched Project ABLE, which stands for Active Bystandership for Law Enforcement. More than 169 ABLE certified law enforcement agencies.
- Created by the federal monitor who oversaw EPIC and modeled off of EPIC.
- ABLE training will be provided at **no cost to local law enforcement agencies**, but those agencies must commit to creating a culture of active bystandership and peer intervention through policy, training, support, and accountability.
- Email: [ABLE@georgetown.edu](mailto:ABLE@georgetown.edu) Website: <https://www.law.georgetown.edu/innovative-policing-program/active-bystandership-for-law-enforcement/>

# Civilian Review Boards / Oversight

- Advocates argue they “can help build trust with the community, aid in transparency, and hold law enforcement accountable.”
- Local governments around the country are discussing the implementation of CRBs if they do not already have them. But these vary widely in how they are formed, what their powers are, and what the makeup of the CRBs are as well as their training.
- Police union contracts can also be an impediment for how effective a CRB can be as can the level of training for the CRB.

# CRBs Vary Around the Country – 4 Typical Models

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- Type 1: Citizens investigate allegations of police misconduct and recommend findings to the chief or sheriff.
- Type 2: Police officers investigate allegations and develop findings; citizens review and recommend that the chief or sheriff approve or reject the findings.
- Type 3: Complainants may appeal findings established by the police or sheriff's department to citizens, who review them and then recommend their own findings to the chief or sheriff.
- Type 4: An auditor investigates the process by which the police or sheriff's department accepts and investigates complaints and reports on the thoroughness and fairness of the process to the department and the public.

<https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>

# Civilian Review Boards

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- If they are to be implemented, consider that to be effective, they should be **professional**, meaning they should be trained and **educated in police work**, knowledge of equipment capabilities, police procedures, and the law.
- Captain Pamela Seyffert with Sacramento Police Department notes:  
“Continued education and frequent ride-a-longs with the agencies they serve will be critical to help legitimize these boards with the sworn personnel. If civilian review is professionalized, law enforcement agencies will gain legitimacy and increase trust in the communities that they serve.”



# CRB Examples

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- Columbus board put the issue on the ballot and it was approved by almost 75% of voters. The CRB will have subpoena powers, the authority to conduct independent investigations, recommend disciplinary action (but no power to actually discipline).
- Members of the CRB will be appointed by the Mayor, need to undergo background checks, training in law enforcement, criminal law, and diversity.
- Columbus also approved a separate allocation of funding for an office of Inspector General.
- Because of the union, the chief of police and public safety director are still responsible for discipline.

# Madison Example

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- Poised to create a CRB with subpoena power and wherein the city would pay for attorneys to represent complainants before the CRB. No ability to discipline police but could recommend discipline.
- City attorney noted there “may be some legal, liability and ethical considerations” related to the monitor helping people find and pay for attorneys to represent complainants before the PFC,” given that that attorney may “also file a lawsuit against the City, resulting in the city effectively paying an attorney in preparing to sue the city.”

# Civilian Review Board Problems

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Among other issues, IMLA had a case involving a district court allowing the conclusions and findings from a CRB into evidence in a *Monell* case where it declined to bifurcate the individual officers' Section 1983 case from the City's case.

The conclusions included that the officers were untruthful and that the findings of excessive force were substantiated in the particular case at hand, as well as other conclusions and findings from the past several years involving other excessive force complaints.

# State / Federal / Independent Oversight of Police Shootings

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- Missouri Highway Patrol recently began handling investigations into police shootings in Kansas City to provide external oversight.
- Sacramento agreed to appoint an Inspector General to review use-of-force incidents inside the Sacramento Police Department. The Inspector General has “full independence and authority to investigate officer-involved shootings and use-of-force incidents that result in serious bodily injury or death.”
- Colorado AG oversight SB 20-217 provides for pattern and practice investigations.

# What does “Defund” the Police Mean?

- Some are asking for local mayors to declare racism a “public health crisis” and re-allocate funds from the police and shift them to things like social services, affordable housing, mental health support, substance abuse support, and healthcare.

# Defunding the Police

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- Los Angeles redirecting \$150 million from the police budget to social services.
- St. Petersburg, Florida officials announced that officers will soon no longer be dispatched to some calls — like those involving mental health crises, neighborly disputes or truant kids — with plain-clothes social workers sent in their place.
- The Austin City Council unanimously voted to cut about one-third of next year's \$434 million police budget amid national calls for “defunding” law enforcement agencies.

# Defunding Pitfalls

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- Diversity has increased in many police forces in recent years. Most police forces are subject to CBAs and seniority provisions in those CBAs. So if defunding means cutting personnel, the local governments may be forced to lay off newest hires, which are predominantly minorities and women in some communities.
- Reallocating funds to mental health professionals over police may sound like a good idea, but what about gray areas where 911 dispatch gets a call that clearly involves a mental health crisis but also the potential for violence?

# Austin's Defund / Reallocation

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- The Austin police funds were reallocated to emergency medical services for Covid-19, community medics, mental health first responders, services for homeless people, substance abuse programs, food access, ... The city council is using money saved from the police budget to buy two hotels to provide supportive housing for homeless residents.
- “For decades, Austin has spent so many dollars policing homelessness, jailing the homeless, and paying for emergency rooms and 911 calls instead of reinvesting those same dollars to finally start reducing homelessness,” said Casar, the local councilmember. “By adjusting the police budget even just a little bit, we are going to be able to house and help hundreds of people with these two hotels ...”



# ABQ Community Safety Department

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- Designed to relieve stress on the city's police. Instead of the police or fire departments responding to 911 calls related to inebriation, homelessness, addiction and mental health, the new division will deploy unarmed personnel made up of social workers, housing and homelessness specialists, and violence prevention coordinators.

# ABQ Community Safety Department

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- ACS will give 9-1-1 dispatch an option to send trained professionals such as social workers, housing and homelessness specialists, violence prevention, and diversion program experts when a community safety response is more appropriate than a paramedic, firefighter, or armed police officer. ACS first responders may also be dispatched alongside other first responders from the police or fire departments. The new cabinet-level department is the culmination of two years of preliminary work to change the way Albuquerque handles public safety.

# Incarceration Practices

- Disproportionate incarceration statistics: **what is your moral obligation with regard to equality and fairness**
- Are your incarceration practices equal / fair? If not, what can you do? What should you do?
  - City of Columbus strategy
  - Coronavirus jail depopulation

# City of Columbus Strategy

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- The City Attorney's Office to review all alleged misdemeanor criminal offenses before charges are brought and noting that in the case of most non-violent offenses, citizens will receive a summons rather than being incarcerated prior to trial.

# Reducing the Prison Population Because of COVID

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- Since mid-March, San Francisco has reduced its jail population by nearly forty per cent, and California has made plans to release thousands of people from state prisons.
- In New Jersey, the State Supreme Court authorized the release of as many as a thousand detainees from county jails.
- Each week in April 2020, the federal-prison population declined by around a thousand people; by May 2020, it had reached its lowest level in two decades.
- In dozens of cities, police officers were ordered to make fewer arrests, district attorneys dropped low-level charges, and judges vacated bench warrants for unpaid fines and other minor infractions.

# What about Ethical Duties as to Police Clients?

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- Rule 1.3 Comments: a lawyer should “take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.
- Thus far talking about racism and how it impacts police community relations, but what about our obligations to our police officers? In some cases, they may be our clients if no conflict exists. And in general, the health of the overall police force is in our client’s best interest.
- What are our ethical / moral obligations to balance their feelings and morale?

# Officer Morale

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- More than 200 law enforcement officers across Colorado resigned or retired in the weeks after Gov. Jared Polis enacted sweeping police reforms. Aurora police Officer Judy Lutkin, a 30-year veteran who is president of the Aurora Police Association. “We’re scrambling to figure out the insurance bit, to prevent officers from losing their houses when they’re acting in good faith. I’m looking to retire and I don’t want to have to leave, but I don’t want myself and my family at risk.”

# Look at the Big Picture

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- Do you believe systemic racism is a problem in your community and if so, do you believe you have a professional or ethical obligation to try to improve the situation?
- A lot of competing forces involved in these issues. There is no right solution for every community in this country. What's your officer morale? How are your police / community relations? What are your community members asking for? How can you do better?
- Remember Rule 2.1: In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.



# Statement by 9 Justices of Washington Supreme Court

- The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will. The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all.
- It is only by carefully reflecting on our actions, taking individual responsibility for them, and constantly striving for better that we can address the shameful legacy we inherit. **We call on every member of our legal community to reflect on this moment and ask ourselves how we may work together to eradicate racism.**

# Questions?

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