

THE TRUTH AND ACTION PROJECT: ADDRESSING SYSTEMIC RACISM IN THE CRIMINAL JUSTICE SYSTEM IN MINNESOTA*

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* This article was submitted for publication in February 2022. The project has progressed since then, but the authors have chosen to keep this article largely as submitted to reflect the beginnings of the project. A full project report is forthcoming.

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I think the biggest challenge is that white people, we want to go faster, fix faster, feel better faster. That's just not how historical trauma works. So, any cities or communities looking at similar kinds of commissions need to take a long-view time frame in anything they set up, and not get trapped in thinking people will be reconciled and move on. It's been 500 years.

Gail Werrbach¹

¹ Martin Levine, *Maine's Truth and Reconciliation Effort: A New Path Forward*, NONPROFIT Q. (Nov. 5, 2020), <https://nonprofitquarterly.org/maines-truth-and-reconciliation-effort-a-new-path-forward/> [<https://perma.cc/JD6T-YFZW>] (quoting Gail Werrbach, one of the five commissioners of the Maine Wabanaki-Child Welfare Truth and Reconciliation Commission that was formed to address Maine's approach to meeting the child welfare needs of its Native American community).

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I. INTRODUCTION

Daunte Wright,² Jonathan Price,³ Breonna Taylor,⁴ Ahmaud Arbery,⁵ Elijah McClain,⁶ Alton Sterling,⁷ Philando Castile,⁸ Jamar Clark,⁹ Freddie

² See *The Killing of Daunte Wright and trial of Kimberly Potter*, MPR NEWS, <https://www.mprnews.org/crime-law-and-justice/killing-of-daunte-wright> [<https://perma.cc/EAS9-BW3L>] (last visited Feb. 18, 2022) (D.O.B. 2001–D.O.D. Apr. 11, 2021).

³ See *Jonathan Price—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/jonathan-price> [<https://perma.cc/9XVV-Q67D>] (last visited Feb. 18, 2022) (D.O.B. 1989–D.O.D. Oct. 3, 2020).

⁴ See *Breonna Taylor—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/breonna-taylor> [<https://perma.cc/JFB4-TLHC>] (last visited Feb. 18, 2022) (D.O.B. June 5, 1993–D.O.D. Mar. 13, 2020).

⁵ See *Ahmaud Arbery—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/ahmaud-arbery> [<https://perma.cc/VLA7-2W3X>] (last visited Feb. 18, 2022) (D.O.B. May 8, 1994–D.O.D. Feb. 23, 2020).

⁶ See *Elijah McClain—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/elijah-mcclain> [<https://perma.cc/FR7F-J8DD>] (last visited Feb. 18, 2022) (D.O.B. Feb. 25, 1996–D.O.D. Aug. 30, 2019).

⁷ See *Alton Sterling—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/alton-sterling> [<https://perma.cc/MM35-JG2L>] (last visited Feb. 18, 2022) (D.O.B. June 14, 1979–D.O.D. July 5, 2016).

⁸ See *Philando Castile—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/philando-castile> [<https://perma.cc/9RQZ-RYUF>] (last visited Feb. 18, 2022) (D.O.B. July 16, 1983–D.O.D. July 6, 2016).

⁹ See *Jamar Clark—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/jamar-clark> [<https://perma.cc/JE9N-MZ6J>] (last visited Feb. 18, 2022) (D.O.B. May 3, 1991–D.O.D. Nov. 16, 2015).

Gray,¹⁰ Eric Garner,¹¹ Amadou Diallo,¹² Harriette and Harry Tyson Moore,¹³ and George Floyd.¹⁴

These are fourteen of the more than 295 people listed on the Say Their Names Memorial website, a database “compiled to highlight the gravity of systemic racism on the Black community. It is not meant to be exclusionary, however names included must represent Black lives.”¹⁵ Some of the names on the website are widely known and others are not. They were born between 1902 and 2001. Some were as young as twenty years old, and others were in their fifties when they died. Each name is a Black man, woman or child who lost their life—many as the result of a justice system that failed them—and not just at the law enforcement stage.

George Floyd was neither the first nor the last Black man to have lost his life to systemic racism, but George Floyd’s murder¹⁶ sparked protests across Minnesota and in cities throughout the United States. The New York Times reported protests in at least 140 U.S. cities and that the National Guard

¹⁰ See *Freddie Gray—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/freddie-gray> [<https://perma.cc/JK6N-57EM>] (last visited Feb. 18, 2022) (D.O.B. Aug. 16, 1989–D.O.D. Apr. 19, 2015).

¹¹ See *Eric Garner—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/eric-garner> [<https://perma.cc/JA7S-5LLA>] (last visited Feb. 18, 2022) (D.O.B. Sept. 15, 1970–D.O.D. July 17, 2014).

¹² See Jane Fritsch, *The Diallo Verdict: The Overview; 4 Officers In Diallo Shooting Are Acquitted Of All Charges*, N.Y. TIMES (Feb. 26, 2000), <https://www.nytimes.com/2000/02/26/nyregion/diallo-verdict-overview-4-officers-diallo-shooting-are-acquitted-all-charges.html> [<https://perma.cc/QPM6-GANV>] (D.O.B. Sep. 2, 1975–D.O.D. Feb. 4, 1999).

¹³ See *Harry Tyson Moore—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/harry-tyson-moore> [<https://perma.cc/2Q9Y-VXRN>] (last visited Feb. 18, 2022) (D.O.B. Nov. 18, 1905–D.O.D. Dec. 25, 1951); *Harriette Moore—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/harriette-moore> [<https://perma.cc/K3SX-JUHW>] (last visited Feb. 18, 2022) (D.O.B. June 19, 1902–Jan. 3, 1952).

¹⁴ See *George Floyd—Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/george-floyd> [<https://perma.cc/B4DU-3Q7A>] (last visited Feb. 18, 2022) (D.O.B. Oct. 14, 1973–D.O.D. May 25, 2020).

¹⁵ *Say Their Names Memorial*, SAY THEIR NAMES MEM’L, <https://www.saytheirnamesmemorials.com/names> [<https://perma.cc/4RHA-D5WH>] (last visited Nov. 11, 2021).

¹⁶ Amy Forliti & Steve Karnowski, *Chauvin Gets 22 ½ Years in Prison for George Floyd’s Death*, ASSOCIATED PRESS NEWS (June 25, 2021), <https://apnews.com/article/derek-chauvin-sentencing-23c52021812168c579b3886f8139c73d> [<https://perma.cc/KN3R-CBCU>].

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was activated in at least twenty-one states.¹⁷ Why were there global protests demanding police reform and racial justice this time, when for decades the response appeared muted or nonexistent?¹⁸

There are several possible explanations, but we believe that the most important explanation is that Darnella Frazier recorded Officer Chauvin kneeling on George Floyd's neck for nine minutes and twenty-nine seconds. In the recording, one can hear Mr. Floyd beg Officer Chauvin to stop and also call out to his mother.¹⁹ In an Instagram post on the first anniversary of George Floyd's murder, Frazier highlighted her role, stating: "If it weren't for my video, the world wouldn't have known the truth. I own that. My video didn't save George Floyd, but it put his murderer away and off the streets."²⁰ Undeniably, her video also activated communities across the nation to demand change.

The power of this video was two-fold. First, it is documentation of what happened. All too often there has been no video evidence and thus identifying what happened was subject to interpretation or the memories of

¹⁷ Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Nov. 5, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html?auth=login-email&login=email> [<https://perma.cc/VX2C-FVPT>].

¹⁸ *Protests Across the Globe After George Floyd's Death*, CNN WORLD (June 13, 2020, 3:22 PM), <https://www.cnn.com/2020/06/06/world/gallery/intl-george-floyd-protests/index.html> [<https://perma.cc/X2B4-RUQ7>] (viewing photo gallery of protests from around the world).

¹⁹ Lonnae O'Neal, *George Floyd's Mother was not There, but he Used her as a Sacred Invocation*, NAT'L GEOGRAPHIC (May 30, 2020), <https://www.nationalgeographic.com/history/article/george-floyds-mother-not-there-he-used-her-as-sacred-invocation> [<https://perma.cc/BV7W-AXLK>].

²⁰ *Darnella Frazier's Tribute to George Floyd*, FACING HIST. & OURSELVES, https://www.facinghistory.org/sites/default/files/2023-03/Darnella_Frazier%E2%80%99s_Tribute_to_George%20Floyd.pdf [<https://perma.cc/7EAC-R38S>] (last visited June 4, 2023); See generally Jamiles Lartey & Abbie VanSickle, *'Don't Kill Me': Others Tell of Abuse by Officer Who Knelt on George Floyd*, N.Y. TIMES (Feb. 2, 2021), <https://www.nytimes.com/2021/02/02/us/derek-chauvin-george-floyd-past-cases.html> [<https://perma.cc/3M95-N74L>] (explaining that while preparing for Chauvin's trial, the Minnesota Attorney General's Office uncovered similar cases, dating as far back as 2015, where Chauvin was accused of using excessive force when he restrained people "by their necks or by kneeling on top of them." According to police records, Chauvin was never formally reprimanded, "even though at least two of those arrested said they had filed formal complaints.").

those who witnessed the event. When coupled with explicit²¹ and implicit bias,²² selective memory,²³ the subjective standard of reasonable fear,²⁴ and

²¹ Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, BRENNAN CTR. FOR JUST. (Aug. 27, 2020), <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law> [<https://perma.cc/J9E9-6H7N>] (“Explicit racism in law enforcement takes many forms, from membership or affiliation with violent white supremacist or far-right militant groups, to engaging in racially discriminatory behavior toward the public or law enforcement colleagues, to making racist remarks and sharing them on social media.”); see also COUNTERTERRORISM POLICY DIRECTIVE AND POLICY GUIDE, FED. BUREAU INVESTIGATION 89 (Apr. 1, 2015) (“Domestic terrorism investigations focused on militia extremists, white supremacist extremists, and sovereign citizen extremists often have identified links to law enforcement officers.”).

²² See generally Katherine B. Spencer et al., *Implicit Bias and Policing*, 10 SOC. PERSONALITY PSYCH. COMPASS 50 (2016) (“A major cause of biased policing is likely the implicit biases that operate outside of conscious awareness and control but nevertheless influence our behaviors. Implicit biases (e.g., stereotypes linking Blacks with crime or with related traits like violence or hostility) influence judgments through processes of misattribution and disambiguation.”); see also *Implicit Bias*, NAT’L INITIATIVE FOR BUILDING CMTY. TR. & JUST., <https://trustandjustice.org/resources/intervention/implicit-bias#> [<https://perma.cc/SKT6-GQV6>] (last visited Feb. 20, 2022).

²³ See Alison Berry Wilkinson, *Court Rejects Dishonesty and Excessive Force Charges, Grover Beach Police Officer Reinstated*, PORAC LEGAL DEF. FUND (Apr. 3, 2013), <https://poracldf.org/blog/court-rejects-dishonesty-and-excessive-force-charges/> [<https://perma.cc/8GG3-YA3E>] (discussing a situation in which video evidence conflicted with an officer’s testimony; for example, when a suspect was “resisting arrest,” a court in Grover Beach, California, reinstated a police officer who was fired for having lied to justify his use of “excessive force.” “Officers, like any witness, make mistakes; they may perceive something in the heat of the stressful encounter that later, on calm reflection, seems unreasonable. That, however, does not make it a false reporting nor does it make it a misrepresentation.”); see also John R. Black & Lewis “Von” Kliem, *Honest but not Accurate: How Do We Prevent Agencies, Courts and Communities from Presuming Inconsistencies Between a Report and Video Evidence Means an Officer Is Lying?*, POLICE 1 BY LEXIPOL (Nov. 4, 2020), <https://www.police1.com/use-of-force/articles/honest-but-not-accurate-zwwwFgJiDeJfKqzs/> [<https://perma.cc/DPW5-6529>].

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the “blue wall of silence,”²⁵ it is not surprising that police officers rarely get charged in these types of situations²⁶ and even when charged, it is rare that

²⁴ *Graham v. Connor*, 490 U.S. 386, 395 (1989) (“all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ approach.”); Michael Wines & Frances Robles, *Key Factor in Police Shootings: ‘Reasonable Fear’*, N.Y. TIMES, <https://www.nytimes.com/2014/08/23/us/ferguson-mokey-factor-in-police-shootings-reasonable-fear.html> [<https://perma.cc/F5H6-D9C6>] (“deciding whether an officer acted correctly in firing at a suspect is not cut and dried. A host of outside factors, from the officer’s perception of a threat to the suspect’s behavior and even his size, can emerge as mitigating or damning. . . . If an officer believes he or someone else is in imminent danger of grievous injury or death, he is allowed to shoot first, and ask questions later.”).

²⁵ *The Blue Wall of Silence Perpetuates Racist Policing, Wrongful Convictions*, MONT. INNOCENCE PROJECT, <https://mtinnocenceproject.org/the-blue-wall-of-silence-perpetuates-racist-policing-wrongful-convictions/> [<https://perma.cc/K2KP-EPMX>] (last visited Mar. 3, 2022) (defining the blue wall of silence as “an unofficial agreement between law enforcement not to challenge each other’s misconduct.” Additional challenges include prosecutor reticence to prosecute a police officer given the relationship prosecutors maintain with police in order to obtain convictions, and even if prosecuted, judges and juries tend to believe officers over civilians.).

²⁶ Chao Xiong, *Impact of Yanez Trial in Philando Castile’s Death Will Resonate Far Beyond Officer’s Fate*, STAR TRIB. (May 28, 2017, 8:54 AM), <https://www.startribune.com/impact-of-yanez-trial-will-resonate-far-beyond-officer-s-fate/424834383/> [<https://perma.cc/PAK9-NKV9>] (explaining that in Minnesota, Jeronimo Yanez, the police officer who shot Philando Castile, was “believed to be the first police officer charged with killing a civilian in modern Minnesota history.” In March 2018, Minneapolis Police Officer Mohamed Noor was charged with third-degree murder and second-degree manslaughter in the shooting death of Justine Ruzcsy Damond after she called 911 to report a suspected rape in her neighborhood); see also Matt McKinney, *Officer Charged with Second-Degree Manslaughter in Killing of Daunte Wright*, STAR TRIB. (Apr. 14, 2021, 10:44 PM), <https://www.startribune.com/officer-faces-second-degree-manslaughter-charge-in-killing-of-daunte-wright/600045829/> [<https://perma.cc/6AJY-LJBH>] (explaining that after George Floyd’s murder, Brooklyn Center police officer Kimberly A. Potter was charged with second-degree manslaughter in the killing of Daunte Wright after Potter shot him with her gun while shouting “Taser” three times).

there is a conviction.²⁷ This time, there was no denying that Officer Chauvin's knee was on Mr. Floyd's neck for more than nine minutes. Anyone who watches the video can see this. The video also shows that in the first couple of minutes, Mr. Floyd repeatedly stated that he could not breathe. Approximately four minutes into the video, Mr. Floyd stops speaking and appears to stop moving under Officer Chauvin's knee. The words from the spectators underscore the depravity of Officer Chauvin's actions as they repeatedly point out to Officers Thao and Chauvin that Mr. Floyd is not resisting arrest, that he cannot breathe, and that Officer Chauvin appears to be enjoying himself. Because of this video, the world was witness to this horrific scene. If society were to do nothing, it would be complicit in Mr. Floyd's death.

The second aspect of the power of this video is that the video created a connection to a real person, George Floyd. This was not some abstract statistic—this was a man whose life ended for allegedly passing counterfeit money in a food market. And, as a result of media coverage, we learned the many dimensions of who George Floyd was.²⁸ It is all too easy to dismiss a statistic—it is much more difficult to ignore what happens to a real person.

²⁷ See Libor Jany, *Minneapolis Police Officer Mohamed Noor Turns Himself in on Murder, Manslaughter Charges in Justine Damond Killing*, STAR TRIB. (Mar. 21, 2018, 12:55 PM), <https://www.startribune.com/minneapolis-police-officer-mohamed-noor-turns-himself-in-on-charges-in-justine-damond-killing/477405923/> [<https://perma.cc/M88Q-LDLR>] (Noor was convicted of both charges in 2019. In 2021, the Minnesota Supreme Court overturned the third-degree murder charge. It was not lost on many that both Yanez and Noor are minorities themselves. Justin Terrell, then executive director of the Council for Minnesotans of African Heritage was quoted saying, "It is suspicious, to say the least, that the first time the system tries to get it right that it's a member of our community that is going to have to go through this," but adding that he didn't necessarily disagree with the charges.). *But see* Chao Xiong et al., *Jury Convicts Potter on Both Manslaughter Counts*, STAR TRIB. (Dec. 23, 2021, 6:26 PM), <https://www.startribune.com/jury-convicts-potter-on-both-manslaughter-counts/600129984/> [<https://perma.cc/H6QL-FES8>] (discussing Potter, a Caucasian woman, who was convicted on both manslaughter counts in 2021).

²⁸ See Toluse Olorunnipa & Giff Witte, *Born with Two Strikes*, WASH. POST (Oct. 8, 2021, 7:47 AM), <https://www.washingtonpost.com/graphics/2020/national/george-floyd-america/systemic-racism/> [<https://perma.cc/Y6A2-ABTH>]; *see also* Maya Rao, *George Floyd's Search for Salvation*, STAR TRIB. (Dec. 27, 2020), <https://www.startribune.com/george-floyd-hoped-moving-to-minnesota-would-save-him-what-he-faced-here-killed-him/573417181/> [<https://perma.cc/G23A-XJJ7>]; Todd Richmond, *Who was George Floyd? Unemployed Due to Coronavirus, He'd Moved to Minneapolis for a Fresh Start*, CHICAGO TRIB. (May 28, 2020, 7:52 AM), <https://www.chicagotribune.com/nation-world/ct-nw-george-floyd-biography-20200528-y3167rrmfnb3dh4x3i5iipneq4-story.html> [<https://perma.cc/ZW82-8FZ9>].

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This project, Truth and Action: Addressing Systemic Racism in the Criminal Justice System in Minnesota²⁹ was developed from this insight and because the Dispute Resolution Institute (DRI)³⁰ at Mitchell Hamline School of Law felt the need to lean into the call for action.

To provide some context for this imperative to do more, it is helpful to note this was not the first time that DRI was engaged in action after a police shooting. In 2016, another Black man lost his life at the hands of a Minnesota police officer. Philando Castile was driving with his girlfriend, Diamond Reynolds, and her daughter when he was pulled over.³¹ Officer Jeronimo Yanez shot Mr. Castile and Ms. Reynolds filmed the aftermath. The whole encounter was also captured on the squad car's dashboard camera.³²

In the aftermath, there were protests throughout the summer of 2016 in the Twin Cities.³³ Notably, the outrage sparked by Mr. Castile's death did not match what happened in the summer of 2020, despite the fact that there was a video, although not of the shooting itself, and in the aftermath, the media coverage included Mr. Castile's work for the Saint Paul Public Schools as a

²⁹ *Truth and Action*, MITCHELL HAMLINE SCH. L., <https://mitchellhamline.edu/truth-and-action/> [<https://perma.cc/TP3C-FWV2>] (last visited Feb. 18, 2022).

³⁰ See generally *Dispute Resolution Institution*, MITCHELL HAMLINE SCH. OF L., https://open.mitchellhamline.edu/dri_press/ [<https://perma.cc/B33J-GPSF>] (last visited Feb. 20, 2022) (explaining that the Dispute Resolution Institute at Mitchell Hamline School of Law was created in 1991. It provides coursework in conflict resolution theory and practice to JD and graduate students, professionals, and other interested individuals, as well as certificates in Conflict Resolution Theory and Practice and Global Arbitration Law and Practice. In addition, DRI has a publication arm, DRI Press, which was established in 2009, to bring important conflict resolution work to a broad audience at low or no cost.).

³¹ *The Death of Philando Castile and the Trial of Jeronimo Yanez*, MPR NEWS, <https://www.mprnews.org/crime-law-and-justice/philandocastile> [<https://perma.cc/WX3S-K592>] (last visited June 4, 2023).

³² KTVU FOX 2 San Francisco, *Philando Castile Dash Cam Video*, YOUTUBE (June 20, 2017), <https://www.youtube.com/watch?v=rfprJGiPVvY> [<https://perma.cc/W84B-VEJ2>].

³³ Jared Goyette, *20 days in St. Paul: Inside the Weeks-Long Protest over the Killing of Philando Castile*, MINNPOST (Aug. 24, 2016), <https://www.minnpost.com/community-sketchbook/2016/08/20-days-st-paul-inside-weeks-long-protest-over-killing-philando-castile/> [<https://perma.cc/2L9A-PHLW>] (“The day after the Castile shooting, roughly 4,500 people marched from J.J. Hill Elementary, where Castile had worked in the cafeteria, to the Governor’s Residence. . . . In the days that followed, St. Paul Police kept their distance from the protesters who gathered in front of the [Governor’s] mansion, maintaining squad cars on either end of the street, but letting supporters and reporters through.”).

Nutrition Supervisor who was beloved by the children and staff of the school.³⁴ In response to the incident, there were many protests at the Governor's Mansion and in both Minneapolis and Saint Paul, but none reached the level of the protests of 2020, which took place not only in the Twin Cities but around the world.³⁵ Officer Yanez was charged with one count of second-degree manslaughter and two counts of dangerous discharge of a firearm but was acquitted on all counts.³⁶ The City of Falcon Heights, where the shooting took place, set up a Task Force on Inclusion and Policing and a parallel Community Conversation process.³⁷

The DRI was one of the entities that ran these Community Conversations to help heal the community and set a plan for moving forward.³⁸ By many measures, the Community Conversations project was a success.³⁹ Most significantly, while the number one concern among participants remained "changing the way the city handles policing practices," how this concern was framed changed.⁴⁰ Survey respondents reported "understanding the role [they] play in injustices within [the] community" and "making new

³⁴ Simerdar Jackson, *Remembering Philando Castile*, FOOD SERV. DIR. (July 14, 2016), <https://www.foodservicedirector.com/operations/remembering-philando-castile> [<https://perma.cc/D44L-SMC4>]; As is often the case, the media coverage was not all positive and included drug allegations. In addition, during the interaction, Castile disclosed to Yanez that he was carrying a firearm (he had a permit for it) Crimesider Staff, *Philando Castile's Family Reveals his Gun Permit*, CBS NEWS (July 13, 2016), <https://www.cbsnews.com/news/philando-castiles-family-reveals-his-gun-permit/> [<https://perma.cc/68YQ-W57Y>].

³⁵ Jason Silverstein, *The Global Impact of George Floyd: How Black Lives Matter Protests Shaped Movements Around the World*, CBS NEWS (June 4, 2021), <https://www.cbsnews.com/news/george-floyd-black-lives-matter-impact/> [<https://perma.cc/7NZQ-MZ8F>].

³⁶ Mitch Smith, *Minnesota Officer Acquitted in Killing of Philando Castile*, N.Y. TIMES (June 16, 2017), <https://www.nytimes.com/2017/06/16/us/police-shooting-trial-philando-castile.html> [<https://perma.cc/LVD5-NLT5>].

³⁷ *Falcon Heights Inclusion and Policing Task Force*, FALCON HEIGHTS, <https://www.falconheights.org/government/falcon-heights-inclusion-and-policing-task-force> [<https://perma.cc/CC5N-DQ4S>] (last visited June 4, 2023).

³⁸ See Sharon Press, *Using Dispute Resolution Skills to Heal a Community*, 35 OHIO STATE J. ON DISP. RESOL. 645, 651 (2020) (detailing collaborative work between the Dispute Resolution Institute, the Minnesota Office of Collaboration and Dispute Resolution, and the Humphrey School at the University of Minnesota).

³⁹ See Elizabeth Dressel, *Evaluation of the Falcon Heights Community Conversation Process*, DISP. RESOL. INST. PRESS 57, 58–62 (2020).

⁴⁰ See *id.* at 59.

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connections with people in my community” as a higher priority for themselves after the Community Conversations.⁴¹

There were additional positive outcomes. The final policing and inclusion recommendations of the Falcon Heights Task Force were adopted by the City of Falcon Heights. The contract for policing was awarded to the Ramsey County Sheriff who was “open to the recommendations put forth by the Falcon Heights Task Force.”⁴² Three members of the Task Force now serve on the five-member City Council. Falcon Heights has an active Community Engagement Commission that “advises the City Council on matters related to community needs and issues, crime and prevention, public awareness, community involvement and human rights issues” as well as planning and facilitating community events such as Human Rights Day and the annual Ice Cream Social.⁴³ The theme for the 2021 Human Rights Day event was Changing Racial Covenants: Past and Present.⁴⁴

However, it was not lost on Sharon, as director of DRI, that four years later, despite a productive set of conversations that resulted in changes in the City of Falcon Heights, nothing had really changed in terms of disparate treatment by law enforcement. The problem with policing was and is systemic—not individual. While the work of Falcon Heights was rewarding and had individual impact, it was not enough. What is needed is systemic change across the full spectrum of the criminal justice system, starting with law enforcement and continuing through prosecutorial and defense attorney

⁴¹ See *id.* at 62.

⁴² Jaime Delage, *Falcon Heights Chooses Ramsey County to Provide Policing After Cutting Ties with St. Anthony*, PIONEER PRESS, <https://www.twincities.com/2017/10/25/falcon-heights-chooses-ramsey-county-to-provide-policing-after-cutting-ties-with-st-anthony/> [<https://perma.cc/WLN6-4PTF>] (last updated Nov. 27, 2017, 10:23 AM).

⁴³ See *Community Engagement Commission*, FALCON HEIGHTS, <https://www.falconheights.org/government/city-commissions/community-engagement-commission> [<https://perma.cc/8W5M-D6CV>] (last visited Feb. 20, 2022).

⁴⁴ See *Human Rights Day*, FALCON HEIGHTS, <https://www.falconheights.org/residents/city-events/human-rights-day> [<https://perma.cc/BCE7-2KMD>] (last visited Feb. 20, 2022).

discretion,⁴⁵ court hearings, corrections, probation, and re-entry (following incarceration). Some aspects of the criminal justice system, such as law enforcement and prosecutorial discretion, have routinely been scrutinized. We believe it is important to consider each aspect of the system, as well as the system as a whole.

In the aftermath of the murder of George Floyd, there appeared to be broad consensus that it was time for such a systemic review and a demand for change. Several organizations, including Community Mediation Minnesota,⁴⁶ called on Minnesota Governor Walz to consider a transitional justice project.

II. TRANSITIONAL JUSTICE V. RESTORATIVE JUSTICE⁴⁷

According to the International Center for Transitional Justice, Inc., “the aims of transitional justice will vary depending on the context but these features are constant: the recognition of the dignity of individuals, the redress and acknowledgment of violations, and the aim to prevent them from happening again.”⁴⁸ The promise of transitional or “transformative” justice is “in drawing the community to the table to discuss what wrongs were done, and

⁴⁵ See generally L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 YALE L.J. 2626 (2013) (“Faced with overwhelming caseloads and inadequate resources, public defenders must engage in triage, deciding which cases deserve attention and which do not.” Research suggests “implicit biases may influence the rationing of defense entitlements.”).

⁴⁶ See generally *Is Mediation Right for You?*, CMTY. MEDIATION MINN., www.communitymediationmn.org [<https://perma.cc/THN7-LD5V>] (last visited Feb. 20, 2022) (explaining that Community Mediation Minnesota is the umbrella organization of the state-certified community dispute resolution organizations. Sharon is the co-president of this organization).

⁴⁷ See *Three Core Elements of Restorative Justice*, RESTORATIVE JUST INITIATIVE, <https://restorativejustice.org/what-is-restorative-justice/three-core-elements-of-restorative-justice/> [<https://perma.cc/DGE8-FPEL>] (last visited June 4, 2023); John Braithwaite highlights the aim of RJ processes is to “repair the harm done through domination, whether that is the domination of crime, of war, or of school bullying. Because crime and war hurt, justice should heal. Restorative justice has a place for passive responsibility for past wrongs but is more concerned with stakeholders taking active responsibility for justice as a better future.” *Restorative Justice*, JOHN BRAITHWAITE, <http://johnbraithwaite.com/restorative-justice/> [<https://perma.cc/THY4-FAR8>] (last visited Mar. 28, 2023).

⁴⁸ *What Is Transitional Justice?*, INT’L CTR. FOR TRANSITIONAL JUST., <https://www.ictj.org/about/transitional-justice> [<https://perma.cc/YHN6-49ZW>] (last visited Feb. 20, 2022).

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to whom and by whom.”⁴⁹ Two examples of U.S. transitional justice projects include the Maine Wabanaki-Child Welfare Truth and Reconciliation Commission⁵⁰ and the Truth and Reconciliation Commission in North Carolina.⁵¹ There also have been attempts to create truth and reconciliation projects in other jurisdictions including Detroit⁵² and Mississippi.⁵³

But not all transitional justice projects need to be framed as Truth and Reconciliation Commissions (TRC).⁵⁴ While coming from the same background as restorative justice, transitional justice takes a broader

⁴⁹ *Greensboro Truth and Reconciliation Commission Report Executive Summary*, GREENSBORO TRUTH & RECONCILIATION COMM’N 2, 17 (May 25, 2006), https://greensborotrc.org/exec_summary.pdf [<https://perma.cc/5C8F-EM22>] [hereinafter *Greensboro Report*].

⁵⁰ See *Truth & Reconciliation*, WABANAKI REACH, https://www.wabanakireach.org/truth_reconciliation [<https://perma.cc/3V6P-6SYC>] (last visited Feb. 20, 2022) (“The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (the Commission) led a truth-seeking process from February 2013 to June 2015 to uncover the truth about child-welfare practice with Maine’s Native people.”).

⁵¹ See GREENSBORO TRUTH & RECONCILIATION COMM’N, <https://greensborotrc.org/> [<https://perma.cc/C8BV-MM5E>] (last visited Feb. 20, 2022) (describing the Greensboro Truth and Reconciliation Commission, which formed in 2004, as an “independent, democratically selected body seeking truth and healing transformation for Greensboro, N.C. . . .” It was the first Truth and Reconciliation Commission in the United States.).

⁵² See Heather Parker, *Truth and Reconciliation Commissions: A Needed Force in Alaska?*, 34 ALASKA L. REV. 27, 60 (2017) (describing the intent of the Detroit commission and its collapse due to a lack of clarity for the mandate).

⁵³ See Patryk Labuda, *Racial Reconciliation in Mississippi: An Evaluation of the Proposal to Establish a Mississippi Truth and Reconciliation Commission*, 27 HARV. J. ON RACIAL & ETHNIC JUST. 1, 18 (2011) (See <https://trackbill.com/bill/mississippi-senate-bill-2721-state-truth-commission-establish/1990152/> for the 2021 version of the bill. It died in committee. Mississippi has attempted to establish a Truth and Reconciliation Commission every year since 2001 by the annual introduction of a Senate Bill prescribing the powers and duties of such a commission and establishing its procedures.).

⁵⁴ See generally Sharon Yamato, *Commission on Wartime Relocation and Internment of Civilians*, DENSHO ENCYCLOPEDIA, https://encyclopedia.densho.org/Commission_on_Wartime_Relocation_and_Internment_of_Civilians/ [<https://perma.cc/Y6NU-X5ZT>] (last visited June 21, 2022) (describing that the federal commission was established in 1980 to review the facts and circumstances surrounding Executive Order 9066. The final report formed the basis of the Civil Liberties Act of 1988 which included reparations, a public education fund, and a public apology to those who were impacted by the Executive Order.).

approach.⁵⁵ In a transitional justice project the intent is not to restore a community back to what has been but rather to recognize that fundamental change is needed. Often, transitional justice projects take place when countries emerge from periods of conflict and repression in order to address large-scale or systemic human rights violations.⁵⁶ These projects often include the collection of stories of lived experiences.

As Kitty Atkins, Associate Director of DRI, and Sharon considered how DRI should respond, they were mindful that what was needed was a transition. They recognized that the U.S. criminal justice system has never served our communities of color and that there is power in individual stories. If data alone could create the impetus for change, undeniably, change would have already happened.⁵⁷ So, seeing the power of George Floyd's story mobilizing protests throughout the United States and beyond, we conceived of a project which would pair the collection of stories as illustrations of the data. We also recognized that while DRI does not have criminal justice expertise, we do have expertise and experience in convening people with diverse perspectives to talk together. What was needed in this moment was to harness the outrage and calls for action in a productive manner.

Thus, the concept for the project Truth and Action took shape. We specifically wanted it to be a project that drew from the practices of truth and reconciliation in the collection of lived experiences to make the data come alive, but that very intentionally did not end there. The action orientation was critical to the project and was the motivation for people to join the Advisory Committee.⁵⁸

There is another significant difference between the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (the Maine Commission), the Greensboro Truth and Community Reconciliation

⁵⁵ See *Centre for Justice and Reconciliation—How to Justice*, *supra* note 47.

⁵⁶ See *What Is Transitional Justice?*, *supra* note 48.

⁵⁷ See Elizabeth Hinton et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, VERA INST. OF JUST. (May 2018), <https://raceandpolicing.issuelab.org/resources/30758/30758.pdf> [<https://perma.cc/V6VP-WH3D>] (“Racial disparities in the criminal justice system have deep roots in American history and penal policy. In the South, following Emancipation, black Americans were specific targets of unique forms of policing, sentencing, and confinement. Laws that capitalized on a loophole in the 13th Amendment that states citizens cannot be enslaved *unless* convicted of a crime intentionally targeted newly emancipated black people as a means of surveilling them and exploiting their labor.”).

⁵⁸ See *Truth and Action: Advisory Committee*, MITCHELL HAMLINE SCH. L., <https://mitchellhamline.edu/truth-and-action/advisory-committee/> [<https://perma.cc/M7UG-PA2F>] (last visited Feb. 20, 2022).

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Commission (GTCRP) and the Truth and Action Project. Namely, how the projects were created. The Maine Commission was the result of a mandate endorsed by the governor of Maine and the five tribal chiefs.⁵⁹ In contrast, the GTCRP was created by community members and former members of the Communist Workers Party. GTCRP grew out the 1979 Community Workers Party rally where five demonstrators were killed.⁶⁰ The GTCRP viewed its work as “the beginning of a citizen effort toward investigation and dialogue”⁶¹ in contrast to the City Council, which is officially on record as opposing the truth and reconciliation process.⁶²

The Truth and Action project was created under the auspices of DRI but was intentionally framed as a free-standing project that would be steered by an Advisory Committee.⁶³ To date, while there has not been any “official” response to the project—either in support of or against its work—the project has received strong cooperation from entities holding data which would be helpful to the project.⁶⁴ In the next Section we describe the Truth and Action Project and its component parts, and Section IV concludes with the preliminary lessons learned.

III. TRUTH AND ACTION PROJECT

A. *Scope*

The project is premised on the notion that individual participants will benefit from having the recognition derived from “telling their story,” being heard and acknowledged, and knowing that their story will be used to address

⁵⁹ See Charlotte Bacon, *Beyond the Mandate: Continuing the Conversation*, REP. OF THE MAINE WABANAKI-STATE CHILD WELFARE TRUTH & RECONCILIATION COMM’N 6 (June 14, 2015), https://d3n8a8pro7vhmx.cloudfront.net/mainewabanakireach/pages/17/attachments/original/1468974047/TRC-Report-Expanded_July2015.pdf?1468974047 [<https://perma.cc/TUC9-55EL>].

⁶⁰ See *Greensboro Report*, *supra* note 49, at 2.

⁶¹ *Id.* at 3.

⁶² *Id.* at 20.

⁶³ See *Truth and Action*, *supra* note 29 (“In partnership with our project advisory committee, and along with other interested individuals and community organizations, we established a Truth and Action project—a project created under the umbrella of transitional justice, which relies on the foundation that reform and reconciliation are not possible without first understanding the truth.”).

⁶⁴ The data elements are described in *infra* Section III.B.3.

systemic racism in the criminal justice system. The broader society will benefit by having a deeper, clearer, and more nuanced understanding of the lived experiences, symptoms, and impacts of racism in the criminal justice system. Further, broader society will benefit from policy decisions and action strategies being formed and implemented based on community-based evidence.⁶⁵

Because we wanted to include the full spectrum of the criminal justice system and not just one aspect (like law enforcement), we decided that we needed to initially limit the geographic area—namely, to the Twin Cities. Another reason for this decision was out of respect to each of the unique sovereign Nations in Minnesota.⁶⁶ The Native Population is over-represented in all aspects of the criminal justice system⁶⁷ and must be a part of any look at systemic racism. However, in order to work with all Tribes in Minnesota, we must first build relationships with those Tribes where we have not yet had significant contact. By keeping the geographic designation as the Twin Cities, we can involve the robust Native American community who reside in the Twin Cities, with the assistance of our project colleagues that are members of this Native American community.

Although the “Twin Cities” were named as the geographic area for the project, we recognize that it is likely that some of the needed actions for reform will require legislative changes and would have impact beyond the Twin Cities. To further complicate things, there are many ways one can define the Twin Cities—it could be the cities of Saint Paul and Minneapolis, it could be

⁶⁵ IRB approval.

⁶⁶ See *Minnesota Indian Tribes*, MINN., <https://mn.gov/portal/government/tribal/mn-indian-tribes/> [<https://perma.cc/G8ZT-3WQH>] (last visited Feb. 20, 2022) (showing that the official government website states that there are seven Anishinaabe (Chippewa and Ojibwe) reservations and four Dakota (Sioux) communities in Minnesota).

⁶⁷ See Leah Wang, *The U.S. Criminal Justice System Disproportionately Hurts Native People: The Data, Visualized*, PRISON POL’Y INITIATIVE (Oct. 8, 2021), <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/> [<https://perma.cc/4ZNB-GNMD>] (revealing that in 2019, “there were over 10,000 Native people locked up in local jails. Although this population has fluctuated over the past 10 years, the Native jail population is up a shocking 85% since 2000. And these figures don’t even include those held in ‘Indian country jails,’ which are located on tribal lands Meanwhile, the total population of Native people living on tribal lands has actually decreased slightly over the same time period, leaving us to conclude that we are criminalizing Native people at ever-increasing rates.”); accord Emily Widra et al., *New BJS Data Reveals a Jail-Building Boom in Indian Country*, PRISON POL’Y INITIATIVE (Oct. 30, 2020), <https://www.prisonpolicy.org/blog/2020/10/30/bjs-indian-country/#lf-fnref:1> [<https://perma.cc/4C9D-A9KP>].

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the counties of these two cities: Ramsey and Hennepin; or it could be the Twin Cities Metro area which typically includes a seven-county region (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties). For data collection, we decided to take a narrower view and focus on Ramsey and Hennepin Counties (and in some situations, Saint Paul and Minneapolis). At the same time, we decided to be more expansive in our story collection since borders are very porous, and people who work in Minneapolis or Saint Paul often live in one of the adjacent suburbs. Because we were not tying someone's story to a particular data point but rather using the story as an illustration, we felt that this formulation maintained the integrity of the project.

B. *Advisory Committee*⁶⁸ and Work Groups

Kitty and Sharon spent the first several months of project development in conversation with individuals representing a cross-section of the community. The purpose of these conversations was two-fold. First, Kitty and Sharon were reaching out to build relationships and determine if the project had community support and secondly, they wanted to create an Advisory Committee. The idea was to have a relatively large Advisory Committee in order to include representatives from each part of the criminal justice system who have the power to effectuate change as well as members of the impacted communities. Those early conversations were incredibly meaningful.⁶⁹ Through them Kitty and Sharon confirmed that the project was needed and that the idea of both collecting stories and ending in action really resonated. Even though people were busy and already stretched, DRI had no trouble assembling an impressive Advisory Committee.

Members expressed a range of reasons for joining the group. All believed that the goals of the project were necessary and worthwhile. The co-authors explain their rationale for joining as follows. Professor Richard Frase joined the project because of his long-standing concern about racial disparities in Minnesota criminal justice, and his multiple research projects examining

⁶⁸ See *Truth and Action: Advisory Committee*, *supra* note 58.

⁶⁹ Kitty and Sharon also made connections with other similar projects and initiatives always with the frame that the DRI wanted to work in cooperation, not competition.

these problems⁷⁰; Judge Juanita C. Freeman joined the project because of her lifelong commitment to breaking down racial barriers in the justice system. Her goal is to be an agent of change and to break the status quo, she believes one needs to think outside the box and do everything in their power to leave the world better than they found it. Other Advisory Committee members expressed similar reasons.

In addition to the Advisory Committee, DRI created three initial work groups⁷¹ and in the next phase, anticipates creating additional ones to focus on the development of action items. The initial work groups were Community Engagement, Data Collection, and Story Collection. Each work group is co-chaired by two members of the Advisory Committee and has staff support provided by DRI. Membership in the work groups is not limited to members of the Advisory Committee.

1. COMMUNITY ENGAGEMENT

The Community Engagement work group was charged with developing an outreach plan early in the development of the project so that we could learn what the community wanted from the project and for the community to be invested in the project. The Community Engagement work group is co-chaired by Yusef Mgeni and City Councilmember Jane Prince. Mr. Mgeni is a lifetime resident of the Summit-University community in Saint Paul and a local and national leader in the NAACP.⁷² His great uncle, Frederick McGhee, was Minnesota's first Black criminal lawyer, and Mr. Mgeni has been active in civic and community affairs in his personal and professional

⁷⁰ See generally Richard S. Frase & Julian V. Roberts, *Paying for the Past: The Case Against Prior Record Sentence Enhancements* (2019); Richard S. Frase, *Just Sentencing: Principles and Procedures for a Workable System* (2013); Richard S. Frase, *Four Decades of American Sentencing Guidelines: What Have We Learned?*, 48 *Crime & Just.* 19, 136 (2019); Richard S. Frase et al., *Prior Record Enhancements at Sentencing: Unsettled Justifications and Unsettling Consequences*, 47 *Crime & Just.* 209, 254 (2018); and Richard Frase, *What Explains Persistent Racial Disproportionality in Minnesota's Prison and Jail Populations?*, 38 *Crime and Just.* 201 (2009).

⁷¹ *Truth and Action—Work Groups*, MITCHELL HAMLINE SCH. L., <https://mitchellhamline.edu/truth-and-action/work-groups/> [https://perma.cc/5LEN-83NF] (last visited Feb. 21, 2022).

⁷² Interview by Kateleen Hope Cavett & Christina Bonkowske with Yusef Mgeni, Program Supervisor & Producer, Univ. of Minn., in Saint Paul, Minn. (Mar. 21, 2003; Apr. 26, 2004) (two-part interview available at <http://collections.mnhs.org/cms/display?irn=11119642&return=#transcript> [https://perma.cc/7P6J-FN9L]).

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life.⁷³ Ms. Prince has an extensive record of innovative problem-solving and community engagement. Also serving on the Community Engagement work group are Judge Mark Kappelhoff⁷⁴ and Lynette Faction.⁷⁵ Co-Chair Yusef Mgeni described the initial goal of the Community Engagement work group as making sure that the community was invited to contribute to the design of the project rather than waiting until “the pie is already fully baked and cooling in the window.” As part of the community engagement efforts, the Community Engagement work group created a website⁷⁶ and wrote an Op-Ed for the Pioneer Press⁷⁷ about the project. The Op-Ed ended with an invitation for the community to participate in a session via Zoom where they could learn more about the project and share their thoughts as to what success would look like.⁷⁸

Since the project is under the auspices of an academic institution, it was subject to review by an Institutional Review Board (IRB) “to ensure the

⁷³ Id.

⁷⁴ Prior to being appointed to the bench in the Fourth Judicial District, Kappelhoff was an Associate Clinical Professor of Law at the University of Minnesota Law School. Before that, he was Special Counsel, Civil Rights Division, Office of the Assistant Attorney General; U.S. Department of Justice and Deputy Assistant Attorney General, Civil Rights Division; and Office of the Assistant Attorney General, U.S. Department of Justice. He was actively involved in the Department of Justice’s work in Ferguson, Missouri after the death of Michael Brown. *Hon. Mark Kappelhoff*, UNIV. MINN. L., <https://law.umn.edu/profiles/mark-kappelhoff> [<https://perma.cc/GH7F-DN4U>] (last visited June 4, 2023).

⁷⁵ Ms. Faction currently serves as Dean Anthony Niedwiecki’s executive assistant. As a long-term resident of the Twin Cities, Ms. Faction is well connected and invested in the local community.

⁷⁶ *Truth and Action*, *supra* note 29 (the website was designed to provide information on the project, including a list of the advisory committee and the work groups; to provide an avenue for people to sign up to share their stories; and to provide links to resources in three categories: legal resources, criminal justice reform resources, and mental health and related resources. From the start, we understood that sharing stories and reliving painful experiences could be traumatizing. As a result, we intentionally incorporated mental health resources on the website and in our process for collecting stories.).

⁷⁷ Yusef Mgeni & Sharon Press, *Opinion, Mgeni, Press, et al: Help Us Address Systemic Racism in Minnesota’s Criminal Justice System*, TWIN CITIES PIONEER PRESS (Apr. 18, 2021, 12:43 AM), <https://www.twincities.com/2021/04/18/help-us-address-systemic-racism-in-minnesotas-criminal-justice-system/> [<https://perma.cc/AT2P-PKW3>].

⁷⁸ Id.

protection of human subjects.”⁷⁹ As a stand-alone law school, Mitchell Hamline does not have a standing IRB, but given our relationship with Hamline University, we were able to access Hamline’s IRB. Most of the IRB covers the processes used for story collection and will be discussed in Section III(b)(ii) below, but we were required to articulate the strategy for recruitment in the IRB, and that piece is relevant to community engagement. It was described as:

We will begin by opening up the opportunity to share one’s story to anyone who is interested in doing so. We are beginning the process of letting people know about the project by hosting community listening sessions and also some sessions specifically hosted by the Minority Councils. We also will rely on Advisory Committee members spreading the word in their circles. We don’t yet know whether we will need to do more active recruitment or whether we can rely on self-identification.⁸⁰

a. Community Listening Sessions

Community Listening sessions were held in April and May 2021. In addition to three “open” sessions, the Project held a special session organized by the Minnesota Council on Latino Affairs.⁸¹ At this session, interpreters were utilized so that language would not be a barrier to participation.

Each session opened with a land acknowledgment⁸² and a centering activity led by the project’s trauma expert, Dr. Jennifer Waltman.⁸³ This was followed by a brief overview of the Project and then comments from the co-

⁷⁹ *Information Sheet: Institutional Review Boards Frequently Asked Questions*, U.S. FOOD & DRUG ADMIN. (Jan. 1998), <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/institutional-review-boards-frequently-asked-questions> [<https://perma.cc/BQJ4-EFYU>].

⁸⁰ IRB application (on file with the lead author).

⁸¹ MINN. COUNCIL ON LATINO AFFS., <https://mn.gov/mcla/> [<https://perma.cc/EWB7-YTYA>] (last visited Feb. 21, 2022).

⁸² *See A Guide to Indigenous Land Acknowledgement*, NATIVE GOVERNANCE CTR. (Oct. 22, 2019), <https://nativegov.org/news/a-guide-to-indigenous-land-acknowledgment/> [<https://perma.cc/9VSZ-QMMQ>].

⁸³ *About Jennifer Waltman*, NEUROCALM NEUROFEEDBACK & COACHING, <https://neurocalmwellness.com/about/> [<https://perma.cc/76SL-ZGL7>] (last visited June 21, 2022).

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chairs of the three work groups with the goal of providing some context. We then invited comments and questions from the attendees (although we tried to convey that we intentionally were coming to these sessions without having already figured out all the answers).

We found we had to navigate a delicate balance in terms of community engagement. On the one hand, we needed to have sufficient information and development of our plan so as to provide a meaningful picture of what we were trying to accomplish and to instill confidence in the project. On the other hand, we wanted to address the outcomes that were important to the community. We understood this moment as one of empowerment for people of color, and while we could and should stand in solidarity, we should not substitute our judgment for that of the community.

As a result, we began these first community conversations with the explicit statement that the project was still in formation and that we were seeking community input. For some, this was confusing and they did not know how to respond. They came to the meeting to learn more about the project and how they could get involved. They wanted answers, and we wanted input. The most significant explanation for this disconnect is that most of the people who participated in these initial meetings were Caucasian and were working to find ways to be a part of solutions instead of part of the problem. The fourth (last) session, which we ran in cooperation with the Minority Council on Latino Affairs, was an exception in terms of attendees. The participants at this session were Latinx and included individuals who had stories to tell of their experience with the criminal justice system on their own behalf or of a loved one.

In our debrief discussions, the Community Engagement work group speculated that the general sessions did not attract many people of color who had stories to tell because they were exhausted from the intensity of the trauma of the summer. We needed a different approach to build relationships with trusted intermediaries. The next stage of community engagement was to return to the method that had been successful in building our Advisory Committee, namely, one-on-one conversations with the leadership of community organizations who could create access to those who had stories to share.

Despite this limitation, the listening sessions were helpful in gathering some initial community input. At the first session,⁸⁴ the focus was on policing and ideas for what needed to change. One attendee pointed out that a major obstacle to change is the fragmentation of the law enforcement system. There

⁸⁴ Held on Saturday, April 24, 2021, at 11:00 AM via Zoom.

are literally hundreds of police departments within the state.⁸⁵ Others had specific ideas for reforms and needed action, for example:

- Diversity: involve more women and people of color, especially more women police officers
- Warrants: address the ways they are issued. Specifically, why do officers have to take someone in under warrant, which can lead to the individual spending more time incarcerated than if convicted of a crime? Look at the reasons people do not return for hearings—hurdles for people in the system, low income, no transportation, etc.
- School to prison pipeline: need to build bridges for incarcerated young people, give them hope, currently they have nothing to lose
- Implicit bias training for judges and prosecutors

There also were some process suggestions, including:

- Look to local communities that are trying to address racism as a public health issue, including how they train their police and include non-white police
- Look at examples in other parts of the world where there is a greater focus on community-oriented policing⁸⁶
- Consider a pilot project
- Stop tinkering around the edges

⁸⁵ See *Police Departments in Hennepin County, Minnesota*, CNTY. OFF., <https://www.countyoffice.org/mn-hennepin-county-police-department/> [<https://perma.cc/2MAZ-TRBQ>] (last visited Feb. 22, 2022) (explaining that in 2021, the Minnesota Board of Peace Officer Standards and Training identified 307 Municipal Police Departments and 87 Sheriff Offices in the state. It also lists eight specialty law enforcement entities (including the State Fair Police, Metropolitan Transit, the Park Police, and the University of Minnesota campus police) and nine Tribal Police Departments. In Hennepin County alone, there are forty-six law enforcement departments.); see also *Public Safety Agencies*, RAMSEY CNTY., <https://www.ramseycounty.us/your-government/departments/safety-and-justice/emergency-communications/public-safety-agencies> [<https://perma.cc/7XFT-F5WS>] (last visited Feb. 22, 2022) (revealing that in Ramsey County, there are ten law enforcement departments). See generally *Minnesota Agency Statistics 2021*, MINN. BD. PEACE OFFICER STANDARDS & TRAINING, <https://dps.mn.gov/entity/post/Documents/Agency%20information%20by%20type%20and%20size%202021.pdf> [<https://perma.cc/YCH7-ACYL>] (last visited Feb. 22, 2022).

⁸⁶ In the second session, there also was a suggestion to look at places where there are effective models of community-oriented policing.

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- Look at legislature and city councils that create laws and statutes which are the seeds that embed racism
- Consider the demands from the group at George Floyd Square⁸⁷

The second community listening session⁸⁸ focused more on the collection of stories and being intentional about connecting with youth. Participants recommended that we consider alternative ways to connect with children, such as via art, sketches, drawings, or rap poetry. In terms of the scope of the project, a participant made the point that boundaries between cities, counties, judicial districts, etc., are artificial and do not have much meaning to individuals who are experiencing racism. Therefore, the project should not be rigid in setting limits on who could share a story.

Participants in the second and third community listening sessions⁸⁹ shared the following ideas around story collecting:

- Use youth as story collectors
- Make sharing of stories as accessible as possible to whomever wants to share
- Consider using a Story Corps⁹⁰ model
- Keep in mind the importance of establishing trust
- Story collection needs to be about creating relationships and connecting to resources given the fatigue and trauma
- Create a safe, “sacred” space
- Collect stories from people who work in the system as well
- Include re-entry issues (this was always part of the project plan)

⁸⁷ *Justice Resolution: Meet on the Streets, George Floyd Square*, CBS 1, 4–5 (Aug. 7, 2020), <https://minnesota.cbslocal.com/wp-content/uploads/sites/15909630/2020/08/38th-Street-East-Chicago-Avenue-South-JUSTICE-RESOLUTION.pdf> [<https://perma.cc/564D-2QA5>].

⁸⁸ Held on Tuesday, April 27, 2021, at 7:00 PM via Zoom.

⁸⁹ The third session was held on Thursday, April 29, 2021, at 7:00 PM via Zoom.

⁹⁰ *About StoryCorps*, STORYCORPS, <https://storycorps.org/about/> [<https://perma.cc/7JVQ-94ZP>] (last visited Feb. 22, 2022) (explaining that StoryCorps’ mission is “to preserve and share humanity’s stories in order to build connections between people and create a more just and compassionate world.” It started in 2003, in Grand Central Terminal and began weekly broadcasts on NPR’s *Morning Edition* in 2005.).

- Connect with the Decriminalizing Communities Coalition which is working at the intersection of immigrant justice and criminal justice reform⁹¹
- Participants in the second and third community listening session shared the following thoughts on what success would look like for the project:
- Use the data to inform changes in police recruitment, training, policies, alternative staffing models (for example incorporating non-sworn response models), prosecution standards, diversion programs, and the cash bail system.
- People in the “system” are seen as listening, caring, and really trying to change/improve things
- Expand the project beyond the metro before too long
- Racially equitable society
- Prevention of unnecessary arrests and imprisonment, examination of why people get arrested (examine wealth gap influences, judicial system arrests, housing issues)
- People can tell their stories and others can hear them
- More practices of restorative justice, in place of some of the practices with criminal justice

The final listening session was co-sponsored by the Council on Latino Affairs. For this session, the Council issued invitations and publicized the event through its newsletter and social media. Given the COVID-19 situation, the meeting was held on Zoom with simultaneous Spanish interpretation. To successfully collect stories, participants noted the importance of establishing trust and being able to share what will come from the sharing of stories, namely, to connect the story sharing with policy changes. They also suggested that the Project go where people gather like houses of worship and have interpreters available, and anonymity, if requested.

⁹¹ *Decriminalizing Communities*, DECRIMINALIZING CMTYS. COAL., <https://decriminalize.squarespace.com/> [<https://perma.cc/6Y6H-U2BV>] (last visited Feb. 22, 2022).

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Ideas from this group for what success would be for the project include⁹²:

- Education—people would understand more about the problem (for example: understanding that U.S. does not have an official language)⁹³
- Change of hearts
- Making our country a more welcoming place, overcome the mistrust
- Making implicit bias concrete and visible⁹⁴
- Connect with people/groups that are already involved and doing grassroots work so as not to duplicate efforts
- Solutions need to be impactful

Specific suggestions for reforms included⁹⁵:

- Ongoing yearly trauma-informed training and DEI requirement for entire departments
- 911 response with social workers and community workers (not just police)
- End pretextual traffic stops (like for rosaries hanging from mirror)
- End the practice of Latinx people being charged with giving a false name due to having two last names or false date of birth due to confusion on month/day or day/month⁹⁶

⁹² Community listening center notes on file with the author.

⁹³ A participant shared the story of an interaction with police where, due to language issues, the police mistook family members as engaging in prostitution. The participant shared that this was humiliating and painful.

⁹⁴ Advisory Committee members expanded this notion to include ending both explicit and implicit bias, acknowledging and addressing implicit bias and increasing awareness of explicit bias and dismantling it. It is much easier for people to acknowledge implicit bias, but much more difficult to claim and address explicit bias and racism. The goal is to unpack and dismantle both.

⁹⁵ Community listening center notes on file with the author.

⁹⁶ A participant noted that “giving false information” can lead to criminal charges that lead to adverse immigration consequences if determined to be “fraud.”

- Stop police reporting to U.S. Immigration and Customs Enforcement (ICE)⁹⁷
- Everyone should have access to a driver's license—if no access to license, one cannot get insurance which leads to other problems
- Misdemeanors should not result in arrest (to keep from ICE access)
- Prohibit ICE from arresting at jails and court

After those sessions, the work of the community engagement work group shifted to engaging in individual conversations with community leaders who could invite and encourage their members to share their stories.

Connecting with people who have stories to tell has proven to be challenging. In order for someone to be willing to share a story, trust must be developed. Often this requires starting with people who know us personally to make personal introductions to individuals and leaders of organizations or groups with people who have stories to share. This initial contact is followed by a conversation with the leader to explain the project and to establish a trusting relationship such that the leader will provide their endorsement of our work and create an opening for individuals to come forward. Developing these types of relationships and trust has been a slow process. First, building individual relationships take time. We also have had to contend with COVID-19 and the uncertainty of whether it is safe or appropriate to meet in person where it is easier to create a connection. We also needed to recognize that leaders in the impacted communities have been overwhelmed.

2. STORY COLLECTION

The work group focusing on story collection developed the process by which stories would be gathered, analyzed, and retained. The Story Collection work group is co-chaired by Jennifer Prestholdt and Raj Sethuraju. Both Ms. Prestholdt and Dr. Sethuraju have been involved in the formation of the project since the beginning and both have expertise and experience in story collection.

⁹⁷ Saint Paul and Minneapolis will not collect immigration status when officers interact with the public but once booked, ICE has access to the arrest database. *Immigration Resources and Assistance*, SAINT PAUL, MINN. (June 10, 2021), <https://www.stpaul.gov/departments/mayors-office/immigration-resources-assistance> [<https://perma.cc/75MP-86D5>]; *Making Minnesota Welcoming: How Local Immigration Policies Work*, IMMIGRANT L. CENT. OF MINN. (Dec. 20, 2018), <https://www.ilcm.org/latest-news/making-minnesota-welcoming-how-local-immigration-policies-work/> [<https://perma.cc/AH55-RU9M>].

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Ms. Prestholdt⁹⁸ is the deputy director of The Advocates for Human Rights and supervises the development and administration of The Advocates' International Justice Program. She was instrumental in running the *Truth and Reconciliation Commission of Liberia Diaspora Project*⁹⁹ which included story collection from the Liberian Diaspora community. Dr. Sethuraju is an Associate Professor in the School of Law Enforcement and Criminal Justice at Metropolitan State University and very involved in restorative practices and community engagement.¹⁰⁰ He describes himself as having over twenty years of community-based activism as a researcher and educator.¹⁰¹

Work group members represent a broad cross-section of the community, including some members who are not on the Advisory Committee. In addition to Ms. Prestholdt and Dr. Sethuraju, each of Minnesota's minority counsels are represented¹⁰² in recognition that story collection would need to be handled in a culturally appropriate manner. Also

⁹⁸ Jennifer Prestholdt, THE ADVOC. FOR HUM. RTS., <https://www.theadvocatesforhumanrights.org/Person/Index?id=4> [<https://perma.cc/3CMN-97UE>] (last visited Feb. 22, 2022).

⁹⁹ See DULCE FOSTER ET AL., *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project*, ii, xii, 578 (2009), https://open.mitchellhamline.edu/dri_press/7/ [<https://perma.cc/K632-V3D8>].

¹⁰⁰ Raj Sethuraju, METRO STATE UNIV., <https://www.metrostate.edu/about/directory/raj-sethuraju> [<https://perma.cc/R2T2-R3TL>] (last visited Feb. 22, 2022).

¹⁰¹ Id.

¹⁰² See Sia Her, COUNCIL ON ASIAN PAC. MINNESOTANS, <https://mn.gov/capm/council/staff/sia-her.jsp> [<https://perma.cc/5WVV-4UEC>] (last visited Aug. 17, 2022); Linda Sloan, COUNCIL FOR MINNESOTANS OF AFR. HERITAGE, <https://mn.gov/cmah/about-us/staff/linda-sloan.jsp> [<https://perma.cc/3AQA-LTSH>] (last visited Aug. 17, 2022); Rosa Tock, MINN. COUNCIL ON LATINO AFFS., <https://mn.gov/mcla/about-us/staff/rosa-tock.jsp> [<https://perma.cc/AT5N-5SN2>] (last visited Aug. 17, 2022); Shannon Geshick, MINN. INDIAN AFFS. COUNCIL, <https://mn.gov/indian-affairs/about-us/miac-staff/executive-director.jsp> [[HTTPS://PERMA.CC/F33D-HAUZ](https://perma.cc/F33D-HAUZ)] (last visited Aug. 17, 2022).

serving is a member of the judiciary,¹⁰³ a few academics,¹⁰⁴ an elected official who ran on the platform of reform and is a community activist,¹⁰⁵ an employee of the Department of Corrections,¹⁰⁶ and a Liberian who had staffed the Diaspora portion of the Liberian Truth and Reconciliation Commission.¹⁰⁷ Dr. Jennifer Waltman¹⁰⁸ is an ex officio member of the work group.

In the IRB application,¹⁰⁹ the research was summarized as follows:

The purpose of the project is to collect the lived experiences of a diverse cross-section of people who live or work in the Twin Cities and have experienced racial disparity in the criminal justice system. For purposes of this project, the criminal justice system includes law enforcement, prosecutorial and defense attorney discretion, judicial discretion, corrections, probation, and reentry. These stories will be combined with data on arrests, convictions, incarceration and recidivism, by race and ethnicity, in order to determine critical areas of needed reform and to make recommendations for changes to the criminal justice system.¹¹⁰

¹⁰³ See *Judge Nicole J. Starr*, MINN. JUD. BRANCH, <https://www.mncourts.gov/About-The-Courts/Overview/JudicialDirectory/Bio.aspx?id=553> [<https://perma.cc/X8WH-WFNG>] (last visited Feb. 23, 2022).

¹⁰⁴ See *Kathy Quick*, UNIV. OF MINN., <https://www.hhh.umn.edu/directory/kathy-quick> [<https://perma.cc/G8NJ-M3PK>] (last visited Aug. 12, 2022); *Tadd Johnson*, UNIV. OF MINN., <https://cahss.d.umn.edu/faculty-staff/tadd-johnson> [<https://perma.cc/5YPL-N3LE>] (last visited Aug. 12, 2022); *Ken Fox*, HAMLINE UNIV., <https://www.hamline.edu/faculty-staff/ken-fox/> [<https://perma.cc/7BB3-3X57>] (last visited Feb. 23, 2022).

¹⁰⁵ Sharon Press, *The Education of an Activist: an Interview with Community Conversation Participant and Organizer John Thompson*, 27 DISP. RESOL. MAG. 3 at 14.

¹⁰⁶ Amy Lauricella.

¹⁰⁷ Ahmed Sirleaf, *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project*, (DRI Press 2009) at ii.

¹⁰⁸ See *About Jennifer Waltman*, *supra* note 83.

¹⁰⁹ Letter dated May 28, 2021, approving the project and assigning is IRB approval number: 2021-05-144ET (on file with the lead author).

¹¹⁰ IRB application (on file with the lead author). Formal approval was obtained on May 28, 2021.

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Given the work group's concern around the potential for trauma in asking people to retell their experiences, our IRB application included a plan for:

Jennifer Waltman PsyD, a trauma-informed intervention specialist . . . to . . . train our interviewers and . . . to provide "psychological first aid" to any subjects who experience unanticipated discomfort or re-traumatization as a result of recounting their experiences with the criminal justice system. At the time of the interview, all "storytellers" will be provided with a list of additional psychological resources in the community.¹¹¹

We explained in our IRB application that we anticipate providing two levels of counseling:

The first level would involve engaging qualified professionals to provide support and limited therapy as identified by the storyteller. When stories are collected in group settings, a professional will be on-site to provide support. Applying a psychological first aid approach can help storytellers experience safety, predictability, and control. The professionals will clinically support all story-takers and storytellers in navigating any suicide ideation that might present. The counseling role will improve safety, ensuring that basic needs are met. The professionals will promote storyteller control by guided use of internal resources, coping mechanisms and problem-solving strategies, which the storyteller can use to help survive the often overwhelming emotions and reactions people feel after sharing their experiences. Supporting storytellers with undeveloped internal resources is long-term and not often possible during psychological first-aid. It will be essential to link these individuals with community providers for long-term relationships and support services based on the storyteller's unique needs.

A second level of counseling professionals would be available to provide referral information for those who need personalized assistance accessing resources beyond those

¹¹¹ Id.

provided on the website. In helping storytellers access and utilize the resources they need to sustain and remain healthy, qualified professionals will focus on external resources. External resources include helping identify community programs, organizations, or individuals who can help them with a particular need—for example, helping a storyteller establish professional care with an appropriate community agency or healthcare provider. At times this function of being a support worker could include working as an advocate for the storyteller. Examples of working as an advocate are helping storytellers identify and locate the government organizations that offer help or perhaps assisting the storyteller in completing forms. In these examples, the qualified professional helps storytellers get some as-yet-unmet needs met by connecting them with the community's resources.¹¹²

The Story Collection work group spent most of its initial time working on developing protocols for story collection that would be culturally appropriate and respectful to those wishing to share. The work group decided that the interviews would be open-ended, rather than having scripted questions. They will elicit stories from interview subjects related to their lived experiences interacting with officials, employees, agents and/or representatives of the criminal justice system. The work group also decided that it would invite people to share their stories either one-on-one or in a group setting.¹¹³ Those who shared in a group setting would be invited to an individual interview if they wished to share more. The group purposely chose to not set a specific time limit on the story collection interviews, but as a practical matter, the decision to have a trauma-informed mental health professional at every interview meant having to set some expectations for length of interview. The work group decided that it would plan for sixty to ninety minutes per individual interview and up to two hours for a group process. Participants could always request additional time to continue the story collection.

¹¹² *Id.*

¹¹³ UJAMAA PLACE, <https://ujamaaplace.org/> [<https://perma.cc/B9JT-UY3H>] (last visited Feb. 23, 2022) (explaining that a group session was held at Ujamaa Place on November 4, 2021, with fourteen men). “Ujamaa Place provides holistic transformation for young Black men experiencing inequity at the intersection of race and poverty and help them achieve brotherhood, stability and personal success.” *Id.*

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The work group articulated its goals as follows¹¹⁴:

- Do no harm to those who participate in the process by providing options for a safe process and ensuring autonomy, e.g., making decisions for themselves
- Create a respectful process, bearing witness to wrongs, honoring memories
- Collect information in a consistent manner
- Clearly articulate boundaries of confidentiality and anonymity in order to manage expectations
- In order to maintain a high level of integrity participants will remain in control of the use of their story and rather than it be a static decision, they would be given the opportunity to change their mind
- Share resources, spaces of healing and other support with community members, as part of a journey towards wellness
- Remain connected to the community such that the project would step up and step back as necessary (the community's truth); meet people where they are (making it possible for people to contribute to the process)

The process for Story Collection, as described in the IRB approval, is as follows:

1. The interview subject will receive written information describing the purpose for the interview, how the subject's identity and other related information will be protected and an approved consent form.
2. The interviewer will travel to the location selected by the interview subject for the interview. This location will be private. In the event that COVID-19 or public health restrictions limit personal visits; interviewers will follow these protocols by telephone or Zoom.

¹¹⁴ Notes on Story Collection Work group (on file with author) (One of the goals of the Liberian Truth and Reconciliation Commission was to create an accurate history. Members of the Story Collection Work group discussed this and affirmatively decided that this was not a goal for this project.).

3. The interviewer will review the written information and consent form and re-confirm the subject's consent.
4. The interviewer will record the interview for purposes of accuracy. All recordings and written summaries will be preserved in a secure location overseen by one of the project investigators.
5. Upon completion of the interview and detailed report, the interview subjects will be given an opportunity to review their report for accuracy and completeness.
6. Each interviewee will have the opportunity to clarify the amount of confidentiality and/or anonymity they choose both prior to the interview and at its conclusion. Subjects can choose to amend their consent at this time.

The work group had a lively discussion around the topic of providing compensation for the stories. In some TRC projects, compensation for telling one's story is frowned upon as there is concern that doing so will taint the authenticity of the collection.¹¹⁵ On the other hand, work group members wanted to recognize the time that people were taking to share their stories. Since the project was about collecting experience of disparities, it seemed especially important to try to give something back and not continue to just take. Here, the project ran into the practical realities of first, how to frame this "compensation" because it was clear that even if the project had a huge pot of money, it would never be able to really compensate individuals for what they had experienced and second, the project had not yet determined how to fund some form of compensation. As a result, the IRB stated that DRI did not:

¹¹⁵ See generally *More Than \$3B Paid to 28,000 Victims of Residential School Abuse: Report*, CBC NEWS (Mar. 11, 2021, 3:10 PM), <https://www.cbc.ca/news/indigenous/iap-final-report-residential-schools-1.5946103> [<https://perma.cc/VWU8-PQZK>] (explaining that this is distinct from providing reparations). See *Truth and Reconciliation Commission of Canada*, GOV'T. OF CAN., <https://www.rcaanc-cirmac.gc.ca/eng/1450124405592/1529106060525> [<https://perma.cc/UU7G-QKF9>] (Sept. 29, 2022) (providing an example of the distinction in the Truth and Reconciliation Commission of Canada which was created as part of a settlement with indigenous victims of residential school abuse. An Independent Assessment Process adjudicated claims and awarded up to \$275,000 to each person "based on the nature and level of abuse suffered." In addition, the Truth and Reconciliation Commission was established to provide "those directly or indirectly affected by the legacy of the Indian Residential Schools system with an opportunity to share their stories and experiences.").

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currently intend to offer compensation or inducements before, during or after participation in the interviews. However, as we work with our community outreach partners and learn more about what is culturally appropriate, we may cover the costs of local transportation to and from interview sites, provide appropriate snacks during interviews and/or, where called for, offer nominal compensation for interviews. If we determine that one or more of these inducements is necessary, we will amend our IRB submission to specify any and all inducements.¹¹⁶

The project was able to provide refreshments for group story collection and gift cards to individuals who share their stories.

The initial estimate was that the project would collect 300–400 stories. This number was derived by considering that we wanted stories from each of the communities of color at each stage in the criminal justice system. This number has since been reduced considerably for several reasons. Individuals and groups that have collected stories, like Emily Baxter with *We Are All Criminals*,¹¹⁷ advised that collecting that number of stories would be difficult to accomplish and to analyze. Further, if what the project was attempting to do was to provide a human face to the issue of disparities in the criminal justice system, the work group did not want to create the impression that this was comprehensive coverage of all of the disparities. In addition, in creating the calculation, the work group failed to take into account that many people would have stories about more than one point in the system. Ultimately, the work group determined that it is neither realistic nor necessary to collect such a large number of stories and thus, it is more likely to be approximately 25–50 stories.

DRI anticipates publishing (anonymized) selected stories (subject to participant permission) and also expects to publish a report from the project, as well as potentially scholarly articles and conference presentations, which may include stories for which permission has been given.

¹¹⁶ See *IRB Application*, *supra* note 110.

¹¹⁷ WE ARE ALL CRIMINALS, <https://www.weareallcriminals.org/> [<https://perma.cc/M9FW-XPfJ>] (last visited Feb. 23, 2022).

3. DATA COLLECTION

The Data Collection work group is co-chaired by Judge Juanita Freeman and Otis Zanders.¹¹⁸ Judge Freeman was appointed to the bench in 2018 and was the first black judge in the Tenth Judicial District in Washington County, Minnesota.¹¹⁹ Prior to her appointment, she served as a prosecutor in the Hennepin County Attorneys' Office.¹²⁰ Mr. Zanders was the CEO and COO of Ujamaa Place from 2012 to 2022.¹²¹ Prior to that he had a nearly thirty-five-year career with the Department of Corrections, including serving as the warden of the Minnesota Correctional Facility in Red Wing, Minnesota.¹²²

In framing the project, the DRI has been clear that the intention was not to spend time and resources in new data collection or research. The initial underlying premise remains—the data exists and largely speaks for itself.¹²³ Racial disparities exist in every stage of the criminal justice system and these

¹¹⁸ *Otis Zanders*, UJAMAA PLACE, <https://ujamaaplace.org/otis-zanders/> [<https://perma.cc/VCP2-8WSD>] (last visited Feb. 23, 2022). In May 2023, Christopher Crutchfield became the new CEO of Ujamaa Place. Mr. Crutchfield is also a member of the Truth and Action Advisory Committee. *Christopher Crutchfield*, UJAMAA PLACE, <https://ujamaaplace.org/christopher-crutchfield/> [<https://perma.cc/ME56-HS4M>] (last visited June 5, 2023).

¹¹⁹ *Id.*

¹²⁰ Evan Frost, *ChangeMakers: Judge Juanita Freeman, Bringing Diversity to the Bench in Washington County*, MPR NEWS (Feb. 18, 2019, 4:00 AM), <https://www.mprnews.org/story/2019/02/18/changemakers-judge-juanita-freeman> [<https://perma.cc/CN85-2A6F>].

¹²¹ *See Zanders*, *supra* note 118.

¹²² *Id.*

¹²³ Racial differences in arrest rates are subject to differing interpretations and some of the available data on this and other issues is difficult to interpret because it omits key variables. However, we decided that given the amount of time and money it would take to conduct a rigorous study, on balance, it would be wiser to focus our efforts on analysis of data that already exists.

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disparities have been documented.¹²⁴ Thus, the work of the Data Collection work group has been on collecting and analyzing the data which would then be combined with the stories of lived experience to make the data come alive—to put a human face on each data point.

In addition to co-chairs Judge Freeman and Mr. Zanders, the work group members include: University of Minnesota Law Professor Richard Frase, a renowned criminal law expert who is the former Co-Director of the Robina Institute of Criminal Law and Criminal Justice,¹²⁵ Kelly Lyn Mitchell, the Executive Director of the Robina Institute and Chair of the Minnesota Sentencing Guidelines Commission since 2019;¹²⁶ Judge Paul Scoggin, who currently presides over criminal matters in the Fourth Judicial District (Hennepin County) and previously served as an Assistant Hennepin County

¹²⁴ *Timeline of Reports*, MINN. DEP'T OF HUM. RTS., <https://mn.gov/mdhr/mpd/timeline/> [<https://perma.cc/66NN-Q5ZP>] (last visited Feb. 23, 2022) (explaining that the Minnesota Department of Human Rights has a timeline of reports and studies on disparate treatment of Black, Indigenous, and people of color (BIPOC) individuals by the Minneapolis Police Department that have been conducted by nonprofits, community leaders, and other governmental entities from 2000 to the present); see also NICOLE GONZALEZ VAN CLEVE, *CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT* xiii (2016) (explaining an ethnographic study of the prosecutor's office and public defender's office in Cook County, Illinois. While her study was not completed in Minnesota, the issues raised are the same ones raised throughout the country); Richard Frase, *What Explains Persistent Racial Disproportionality in Minnesota's Prison and Jail Populations?*, 38 *CRIME AND JUST.* 201, 237 (2009) (exploring the racial disparities in prison and jail populations by examining the disparities at earlier stages of the criminal process. His data analysis reveals that the disparities in prison sentences and prison populations are even greater than at the arrest and conviction stage and concludes that this is primarily due to the heavy weight sentencing guidelines give to offender prior conviction records); Kelly Lyn Mitchell, *Reducing Racial & Regional Disparities in Probation and Sentencing* (Sept. 11, 2019), <https://mn.gov/msgc-stat/documents/meeting%20materials/2019/October/CJIProbationPresentation.pdf> [<https://perma.cc/TNE4-KNZN>] (finding that Native Americans in Minnesota have probation revoked at higher rates than individuals of all other races. This list is meant to be illustrative, not exhaustive, of the data that has been regularly collected and published. While there are gaps in the data, the bigger problem is that the data has not led to comprehensive reform.).

¹²⁵ Richard Frase, UNIV. OF MINN., <https://law.umn.edu/profiles/richard-frase> [<https://perma.cc/ZHK6-HAFY>] (last visited Feb. 24, 2022).

¹²⁶ Kelly Lyn Mitchell, UNIV. OF MINN., <https://robinainstitute.umn.edu/people/kelly-lyn-mitchell> [<https://perma.cc/N96G-ESPJ>] (last visited Feb. 24, 2022).

Attorney;¹²⁷ Erica Schumacher, Director of Strategic Initiatives & Community Relations at Ramsey County Attorney's Office¹²⁸; and Raoul Shah, Assistant Hennepin County Attorney.¹²⁹

The work group started by creating a map of the criminal justice system in Minnesota and then identifying the data that would be helpful to gather at each stage in the process.¹³⁰ The work group selected the years 2016–2020, recognizing that 2020 would likely be an anomaly for statistics given the impacts of COVID-19 and the various Executive Orders issued by Governor Walz.¹³¹ For each element, the work group was interested in obtaining race, gender, and age¹³² and relative rate data by race, to the extent it was available. Relative rate data or relative rate index, compares the rate for a particular group with the total rate for all individuals.¹³³

At this initial point in the work group's process, they developed an ideal set of data to request while recognizing that not all of the data would be

¹²⁷ Judge Paul R. Scoggin, MINN. JUD. BRANCH, <https://www.mncourts.gov/About-The-Courts/Overview/JudicialDirectory/Bio.aspx?id=479> [https://perma.cc/V7AX-7TAU] (last visited Feb. 23, 2022).

¹²⁸ Community Awards, ST. PAUL COLL., <https://saintpaul.edu/alumni/community-awards> [https://perma.cc/WG2Y-NS8Z] (last visited June 5, 2023).

¹²⁹ In 2023, Mr. Shah went into private practice. Raoul Shah, LINKEDIN, <https://www.linkedin.com/in/raoul-shah-9141a759> [https://perma.cc/YK4C-8B2V] (last visited June 5, 2023).

¹³⁰ See *Infra* Appendix A.

¹³¹ *Emergency Exec. Order 20-20: Directing Minnesotans to Stay at Home*, STATE OF MINN. EXEC. DEP'T, GOVERNOR TIM WALZ, https://mn.gov/governor/assets/3a.%20EO%2020-20%20FINAL%20SIGNED%20Filed_tcm1055-425020.pdf [https://perma.cc/H8MC-LM22] (last visited Feb. 23, 2022) (explaining that on March 13, 2020, Governor Walz issued Executive Order 20-01 and declared a peacetime emergency. On March 15, 2020, he issued Executive Order 20-02 ordering the temporary closure of public schools and on March 16, 2020, he issued Executive Order 20-04 ordering the closure of bars, restaurants, and other places of public accommodation. On March 25, 2020, Governor Walz issued Executive Order 20-20 ordering all persons currently living within the State of Minnesota to stay at home or in their place of residence except to engage in the Activities and Critical Sector work.).

¹³² The work group asked for age data in bands of 10–13, 14–15, 16–17, 18–25, and over 25. Youth is defined differently by different entities. For example, youth services may define a youth as under twenty-five while the county attorney defines a youth as under eighteen.

¹³³ *Relative Rate Index Definition*, L. INSIDER, <https://www.lawinsider.com/dictionary/relative-rate-index> [https://perma.cc/S4HW-ER42] (last visited Feb. 25, 2022) (explaining that while relative rate indexes for juveniles have been used more extensively, the data is important for adults as well).

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available or easily accessible. The work group was also mindful that if the work group asked for data from 2016–2020 at each stage, the data would not represent the same individuals or cases. Specifically, the individuals who were involved in a court case in 2016 were likely arrested prior to 2016 and similarly, an individual who completed a sentence and was released during the selected time frame would not have been arrested and arraigned during the same time frame. The intent was not to undertake an extensive research project but rather to provide a baseline for discussion of the issue.

One further disjunction in the data relates to the geographic frame. Given that both Hennepin and Ramsey County Attorneys agreed to serve on the Project Advisory Committee, the work group knew it would have cooperation from those two offices in data collection, so the work group intentionally started with their data. The plan was then to leverage that data collection to obtain data on arrests (going backward) and on incarceration and reentry (going forward). As will be described in greater detail below, as a practical matter, this meant that our data on charges and court dispositions is at the county level,¹³⁴ while our data on arrests is on the city level, namely Minneapolis and Saint Paul. While there are numerous public safety agencies in Ramsey County¹³⁵ and Hennepin County¹³⁶ the Minneapolis Police Department and the Saint Paul Police Departments are the largest law enforcement agencies in each county.¹³⁷

A further limitation on obtaining comparative data is the different ways that racial and ethnic data is described and collected. The county attorneys rely on the racial data that they receive from law enforcement. There is no uniform policy on how law enforcement collects this information, but it is mostly from what police officers observe as opposed to how people self-

¹³⁴ *Overview of Hennepin County*, HENNEPIN CNTY. MINN., <https://www.hennepin.us/your-government/overview/overview-of-hennepin-county> [https://perma.cc/D7DW-4M8G] (last visited Feb. 24, 2022) (explaining that Hennepin County is made up of forty-five cities (including Minneapolis)); *see also About Ramsey County*, RAMSEY CNTY. <https://www.ramseycounty.us/your-government/about-ramsey-county> [https://perma.cc/FJH6-KRYD] (last visited Feb. 24, 2022) (explaining that Ramsey County is made up of nineteen cities (including Saint Paul)).

¹³⁵ <https://www.ramseycounty.us/your-government/departments/safety-and-justice/emergency-communications/public-safety-agencies>

¹³⁶ *Police Contacts*, HENNEPIN CNTY. ATTORNEY'S OFFICE, <https://www.hennepinattorney.org/get-help/crime/police-contacts> [https://perma.cc/V648-4FUK] (last visited June 5, 2023).

¹³⁷ Case Data (on file with the lead author).

identify. The courts in the Second (Ramey) and Fourth (Hennepin) Judicial Districts ask individuals to self-identify. This inconsistency in data collection methods is another reason why the data from different institutional players in the criminal justice system is not fully comparable.

A further complication in data collection is that, according to the U.S. Census Bureau, “[p]ersons who report themselves as Hispanic can be of any race.”¹³⁸ This creates an additional challenge with attempts to analyze treatment of individuals who are Hispanic or Latinx¹³⁹ especially if one is relying on observed rather than self-reported data. Individuals who are ethnically Hispanic may be white, Black, or Native American. In addition, individuals may identify as multiple races or ethnicities. This would be challenging for anyone to observe and capture accurately and also would require each institutional entity to update their data systems to capture multiple races.

The work group did not expect that it would be able to obtain all of the data it had identified as being useful. The plan was to ask for everything that had been identified and analyze what was provided and then to use the stories to identify if there were additional data points needed.

The data collection efforts are ongoing. The preliminary analysis which follows represents the work completed as of January 2022 and includes a list of the additional analysis the Data Collection work group intends to complete.

a. Arrests

To examine arrests, the work group obtained data from the Minneapolis Police Department (MPD) and Saint Paul Police Department (SPPD). Both agencies provided adult arrest data covering the period from January 1, 2019 to December 31, 2019. As used in this report, adult arrests consist of incidents in which individuals were detained and booked by MPD or SPPD; it does not include instances in which individuals were issued a

¹³⁸ *About the Hispanic Population and Its Origin*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/population/hispanic-origin/about.html> (Apr. 15, 2022).

¹³⁹ *Id.* (“People who identify with the terms “Hispanic” or “Latino” are those who classify themselves in one of the specific Hispanic or Latino categories listed on the decennial census questionnaire and various Census Bureau survey questionnaires—” Mexican, Mexican Am., Chicano” or “Puerto Rican” or “Cuban”—as well as those who indicate that they are “another Hispanic, Latino, or Spanish origin.”)

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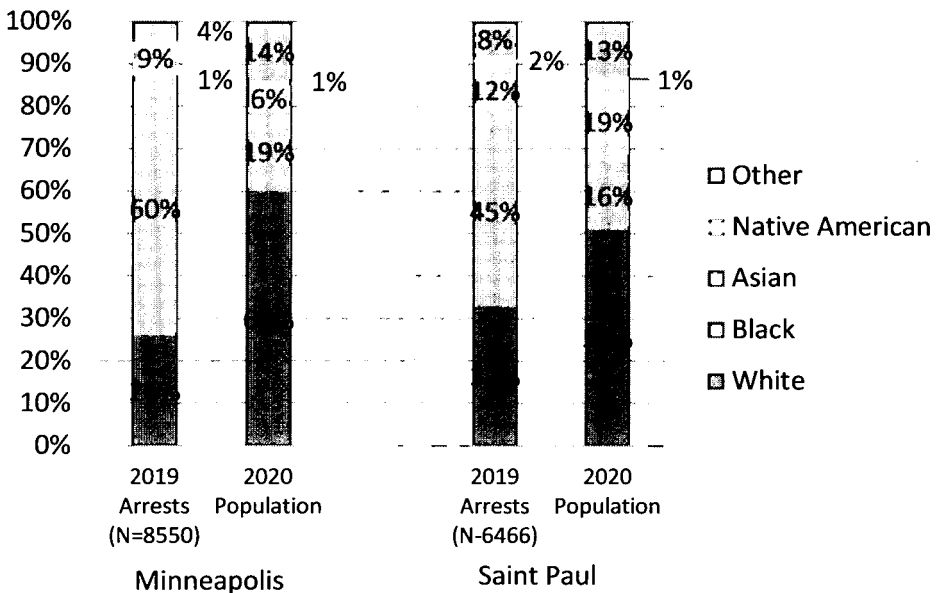
citation or whether the arrest resulted in a conviction.¹⁴⁰ The data analysis for the preliminary report was completed by the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota Law School.¹⁴¹

¹⁴⁰ *Preliminary Data Report for Truth and Action Project 1* (unpublished report) (on file with the lead author).

¹⁴¹ *Robina Institute of Criminal Law and Criminal Justice*, UNIV. OF MINN., <https://robinainstitute.umn.edu/> [<https://perma.cc/PPX8-M25H>] (last visited Feb. 24, 2022).

The 2019 arrest data reveals significant racial disparities. Of the 8,550 adult arrests in Minneapolis, sixty percent of those arrested were Black, while Black individuals only represent twenty percent of the population, according to the 2020 U.S. census.¹⁴² In Saint Paul, a similar disparity is evident. The Saint Paul Police Department made 6,466 arrests. Forty-five percent of the arrests were of people who are Black while representing only sixteen percent of the population according to the 2020 U.S. census.¹⁴³ Further, in Minneapolis, “people who are identified as Native American represent just 1% of the population but 9% of the arrests.”¹⁴⁴ A graphic depiction of this data is included in Figure 1.

Figure 1. Arrests Made by Minneapolis Police Department and Saint Paul Police Department by Race (Adult Arrests Only)



¹⁴² *Minneapolis City, Minnesota; St. Paul City, Minnesota*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/minneapoliscityminnesota,stpaulcityminnesota/POP010220> [<https://perma.cc/6MDL-CFYF>] (last visited Feb. 24, 2022) (showing that the census data reflects the racial breakdown of the total population in each city; it is not limited to the adult population.).

¹⁴³ *Id.*

¹⁴⁴ *Preliminary Data Report for Truth and Action Project*, *supra* note 140.

b. Charging

In Minnesota, prosecution services are provided at both the city and county levels. Pursuant to Minnesota Statute Chapter 388.051, Subdivision 1 and 388.24, County Attorneys are primarily responsible for the prosecution of felony crimes and cases involving juvenile offenders.¹⁴⁵ City Attorneys are responsible for the prosecution of petty misdemeanors, misdemeanors, and gross misdemeanor offenses.¹⁴⁶ The work group opted to focus on the data accessible through the County Attorneys offices in Hennepin (HCAO) and Ramsey (RCAO) Counties.

HCAO provided data on adult criminal cases referred for prosecution and prosecutorial decisions to charge, decline, or divert cases.¹⁴⁷ The data included cases opened from years 2017 to 2019. RCAO provided data on adult criminal cases referred to RCAO for prosecution by law enforcement and prosecutorial decisions to charge or decline to charge those cases. The data spanned from January 1, 2016 to December 31, 2020, but in order to maintain a comparison with the Hennepin data, only data from 2017-2019 was used in this report. In both

¹⁴⁵ *Overview*, MINN. CT. ATT'Y'S ASS'N, <https://mcaa-mn.org/page/overview> [<https://perma.cc/YK6D-66SZ>] (last visited Feb. 24, 2022) (explaining that County Attorneys also are the legal advisor for the county board of commissioners, county officials and county departments, victim and witness assistance, family services such as CHIPS (Children in Need of Protection or Services) and civil commitment actions. The county Attorneys also play a role “in seeking new laws to strengthen law enforcement, criminal justice, child protection, victim’s rights and other areas.”).

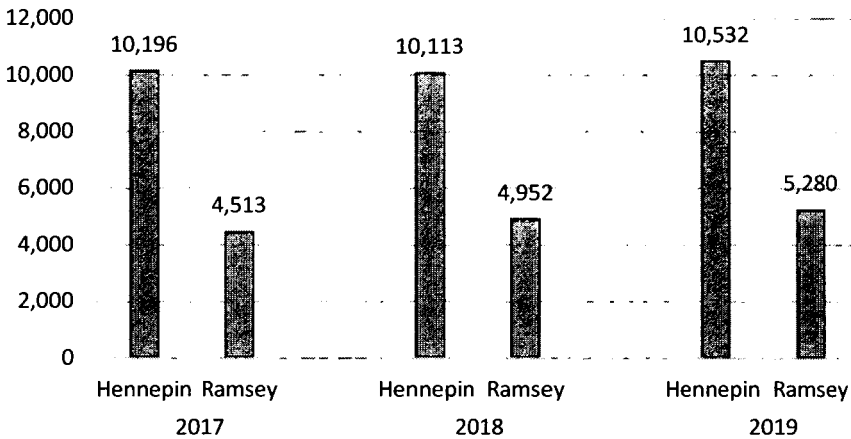
¹⁴⁶ *What We Do*, CITY OF MINNEAPOLIS, <https://www2.minneapolismn.gov/government/departments/attorney/what-we-do/> [<https://perma.cc/A4V4-BVR5>] (last visited Feb. 24, 2022) (explaining that in addition to city attorneys’ responsibility in prosecuting criminal cases, the City Attorney also “represents and defends the city and its employees, departments, boards, and committees.”); *see also About the City Attorney’s Office*, SAINT PAUL MINN., <https://www.stpaul.gov/departments/city-attorney/about> [<https://perma.cc/Z5PA-VJ6X>] (last visited Feb. 24, 2022).

¹⁴⁷ Cases referred included cases that were deferred, deferred-not resubmitted, pending, under investigation, or identified as other, but for purposes of this report, those cases were excluded because they were still in the process of prosecutorial decision-making and did not technically have a charging decision. 3,452 adult cases were dropped for these reasons, consisting of approximately 10% of cases over the three-year period.

instances, the data was provided in aggregate form for analysis by race and ethnicity.

Figure 2 shows the total number of cases referred for prosecution by law enforcement to the County Attorneys in Hennepin and Ramsey Counties. These are referrals in cases involving adults only, though both offices also handle juvenile prosecutions. Referrals can come from any law enforcement agency having jurisdiction to make an arrest within the county. In each year, the volume of case referrals in Hennepin County is about double that in Ramsey County.¹⁴⁸

Figure 2. Total Cases Referred to Hennepin and Ramsey County Attorneys for Prosecution (Adult Only)

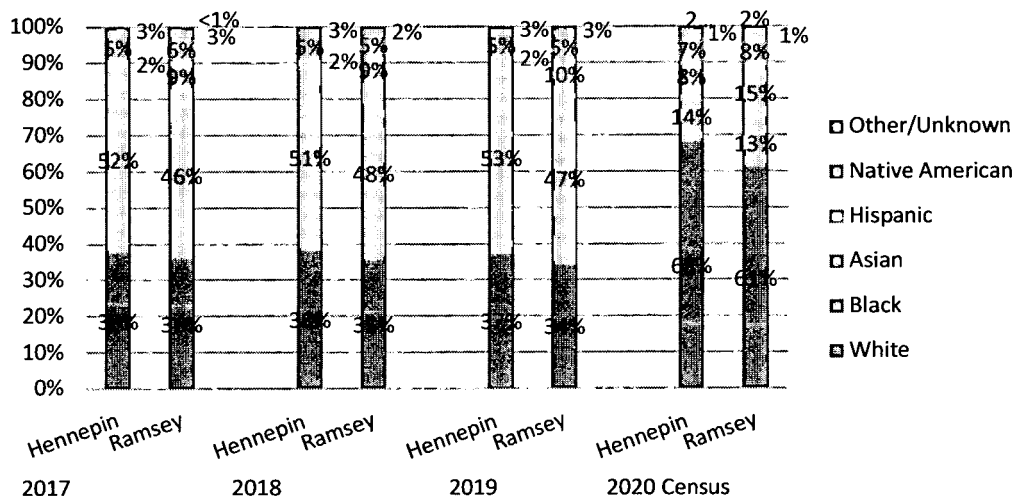


¹⁴⁸ Preliminary Data Report for Truth and Action Project, *supra* note 140, at 2–3.

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Figure 3 shows the racial breakdown of the cases referred for prosecution in Hennepin and Ramsey Counties. The first three columns are for the years 2017, 2018, and 2019. The final column shows the 2020 census data for the county’s population broken down by race.¹⁴⁹

Figure 3. Cases Referred to Hennepin and Ramsey County Attorneys for Prosecution by Race



In both counties, nearly half or more than half of the cases referred for prosecution involved people identified as Black, which is a substantial overrepresentation relative to their proportion of the population in both counties. In contrast, people identified as white comprised just thirty-four percent to thirty-eight percent of the referrals for prosecution in each year despite their majority representation in the populations for both counties. Additionally, there was disproportionality in case referrals for people identified as Native American. Such cases constituted five percent of referrals in Hennepin County and two to three percent of referrals in Ramsey County, while

¹⁴⁹ As noted above, the data regarding individuals of Hispanic ethnicity is incomplete. HCAO did not provide this information. This means that the proportions we report in other racial categories may be higher than it would be if those categories did not include Hispanics.

people identified as Native American comprised just one percent of the population in both counties.¹⁵⁰

A data point that the work group remains very interested in is diversion decisions, namely who was offered diversion by racial breakdown. Both HCAO and RCAO offer diversion programs. RCAO describes its program as:

... a collaboration among the Ramsey County Attorney's Office, Second Judicial District Public Defender's Office, and JusticePoint, a community-based organization. The Second Chance initiative provides eligible people with accountability and opportunity by giving them pathways to make amends; support services; and a better future by avoiding a criminal conviction on their record. Diverting cases also focuses prosecution resources on more serious cases in which a traditional prosecution approach is warranted...

Diversion can take place instead of filing charges (pre-charge) or under suspended prosecution prior to a plea (post-charge). After a referral is made by RCAO or the Public Defender's office, JusticePoint evaluates the individual's eligibility by assessing their criminogenic risk level using the Level of Service Inventory-Revised: Screening Version (LSI-R:SV). People with low- to high-risk scores may be eligible for diversion if they otherwise meet eligibility criteria. Those who score moderate or higher risk on the LSI-R:SV undergo a more in-depth case management inventory in order to develop a recommended case plan that will be responsive to their criminogenic risks and be culturally appropriate.

Once eligibility, risk assessment, and case management inventories (if applicable) are complete, the participant enters into a diversion agreement. Once enrolled, the participant takes part in holistic intervention services, if appropriate, based on their assessment. This gives participants an opportunity to engage in activities that encourage accountability, restorative justice, and pro-social skill-building, as well as programming that focuses on support for substance abuse, mental health, prosocial engagement, and/or cognitive behavioral needs.

While on diversion, the case is still pending and may appear on a background check. Once the participant's

¹⁵⁰ *Preliminary Data Report for Truth and Action Project*, *supra* note 140, at 3–4.

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goals are successfully completed, the case will be dismissed (for post-charge diversion cases) or not charged (for pre-charge diversion cases).

Once the case is dismissed, the participant's record will remain clear of convictions for the diverted offense (though the case may still appear on a background check). Participants who successfully complete diversion may be eligible to have their case record sealed if they maintain a clear record for one year after successfully completing diversion. The Ramsey County Attorney's Office can assist in getting records sealed that are eligible under state statute through its initiative at www.helpsealmyrecord.org.¹⁵¹

Hennepin County also offers adult diversion programs for drug and property crime first-time offenders. The stated goals are to reduce costs and reduce the number of repeat offenders.¹⁵² Unfortunately, RCAO has only recently been specifically tracking diversion data,¹⁵³ so the work group was not able to provide a comparison between HCAO and RCAO diversion efforts.

Figure 4 shows the charging decision by county. A large proportion of cases in both counties were declined for prosecution (26–27% for Hennepin and 34–35% for Ramsey) but the data did not include the reasons for the declination.¹⁵⁴ This is unfortunate because this discretionary point could yield additional insight into racial disparities. The figure includes the percent

¹⁵¹ *Ramsey County Attorney's Second Chance Initiative* (on file with the author); see also *Juvenile Diversion*, HENNEPIN CNTY. ATT'Y'S OFF., <https://www.hennepinattorney.org/get-help/children-families/juvenile-diversion> [<https://perma.cc/6DR7-WXAE>] (last visited Feb. 24, 2022) (providing information on HCAO's juvenile diversion program).

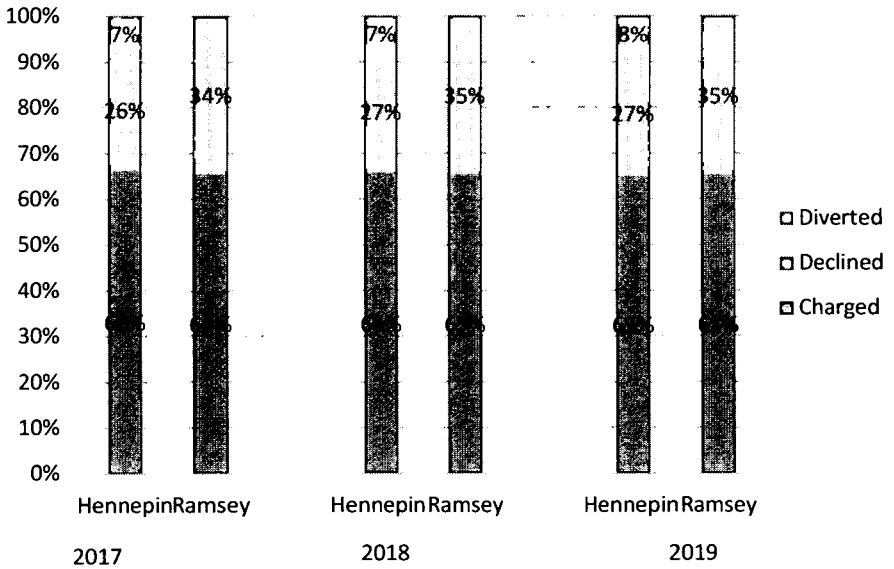
¹⁵² See *Adult Diversion*, HENNEPIN CNTY. ATT'Y'S OFF., <https://www.hennepinattorney.org/about/adult-diversion/adult-diversion> [<https://perma.cc/6G2Z-U2EP>] (last visited Feb. 24, 2022) (“Adult diversion programs refer these offenders to social services, chemical dependency or mental health resources. First-time offenders are closely monitored to make sure they meet program expectations. The goals set include accountability, taking advantage of services offered, remaining law-abiding, completing community service, and paying restitution.”).

¹⁵³ RCAO began using a more robust and consistent tracking procedure for diversion in mid-2019. For the three years shown, because diversion can occur at either the pre-charge or post-charge stages, any diversions that occurred could be reflected in the numbers for both the charging and declination decisions.

¹⁵⁴ *Preliminary Data Report for Truth and Action Project*, *supra* note 140, at 4.

diverted in Hennepin County but not Ramsey for the reasons described above. It is important to note that while diversion data was not collected, diversion was actively pursued. In fact, Ramsey County Attorney John Choi, first elected in 2011, has a reputation as “one of the nation’s most reform-minded prosecutors.”¹⁵⁵

Figure 4. Charging Decisions by County

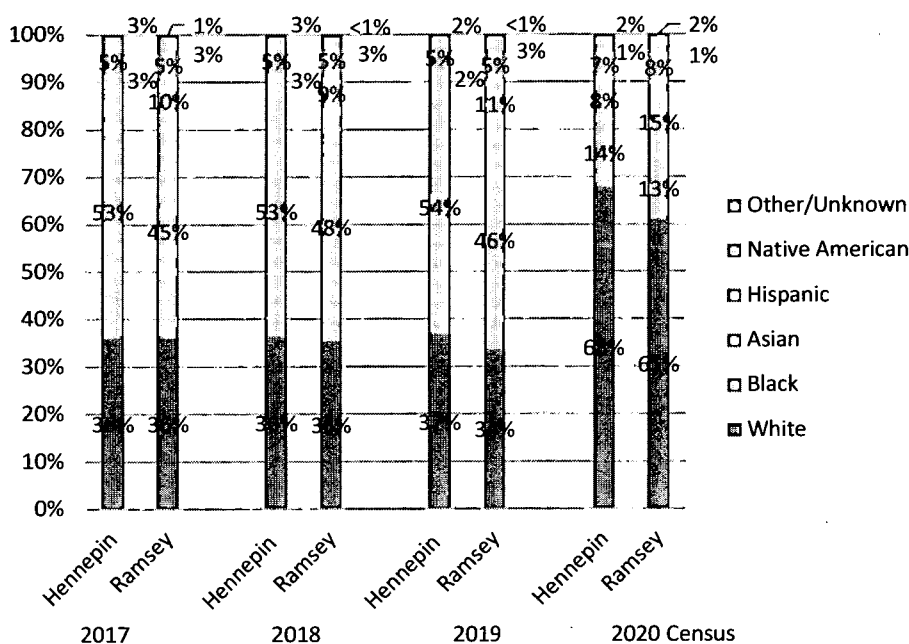


¹⁵⁵ Hibah Ansari & Anna Simonton, *We Can’t Be a Rubber Stamp to What the Police Want’: Ramsey County Attorney Takes a New Approach to Criminal Justice*, SAHAN J. (Jan. 11, 2022), <https://sahanjournal.com/policing-justice/ramsey-county-criminal-justice-reform/> [<https://perma.cc/HYA5-5XGG>] (explaining that in addition to being a strong proponent of diversion, “Choi has embraced reforms including an effort to reduce the use of cash bail and a policy to not prosecute most felonies that arise from ‘pretextual traffic stops’—when a cop pulls someone over for a small driving infraction and uses that stop as an excuse to search or detain them.”).

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Figure 5 shows the racial composition of cases charged by prosecutors in Hennepin and Ramsey counties. Like the racial breakdown of cases referred for prosecution, in both counties, the largest proportion of individuals charged are identified as Black—over fifty percent in Hennepin County and 46–48% in Ramsey County—which is a substantial overrepresentation compared to the proportion in each county population who are Black. In contrast, just over a third of people charged are white, which is a substantial underrepresentation compared to the county populations. Additionally, while just one percent of the population in each county is Native American, of those charged, five percent in Hennepin County and three percent in Ramsey County are identified as Native American.¹⁵⁶

Figure 5. Charging Decisions by Race and County



¹⁵⁶ Preliminary Data Report for Truth and Action Project, *supra* note 140, at 5.

Perhaps the most significant finding from the preliminary analysis is shown in Table 1. The racial disparities in charging decisions reflect the disparities at arrest and referral for prosecution. That is, a comparison of the racial composition of cases referred for prosecution and the racial composition of cases charged, do not change significantly from one decision point to the next.¹⁵⁷

Table 1. Comparison of Racial Composition of Cases Referred for Prosecution and Cases Charged

	Hennepin (2017-19)		Ramsey (2017- 19)	
	Refe rred	Cha rged	Refe rred	Cha rged
White	38%	36%	35%	35%
Black	52%	53%	47%	47%
Asian	2%	2%	9%	10%
Hispanic	--	--	5%	5%
Native American	5%	5%	3%	3%
Other/Unknown	3%	3%	1%	<1%

In the next several months, the Data Collection work group expects to complete additional analysis. Regarding arrests, the work group will be analyzing the arrests by offense type and races for both cities. The intent is to include warrants in the arrest types. The work group is also interested in analyzing excessive force by police cases.¹⁵⁸ Similarly, the work group will be analyzing the offense types of cases referred and charged by race.

¹⁵⁷ *Id.* at 6.

¹⁵⁸ Ezekiel Edwards et al., *The Other Epidemic: Fatal Police Shootings in the Time of COVID-19*, AM. CIV. LIBERTIES UNION 1, 10 (2020) https://www.aclu.org/sites/default/files/field_document/aclu_the_other_epidemic_fatal_police_shootings_2020.pdf [https://perma.cc/4TDA-QGNR] (“These sobering findings suggest that not even a deadly virus—one that has driven people indoors and required social distancing—can curb the American epidemic of fatal police shootings or the disproportionate rate of police killings of Black, Brown, and Native American/Indigenous people.”).

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Regarding pretrial release and bail decisions, the work group will provide an overview of releases from jail and the average time served in jail in Hennepin and Ramsey Counties, but it will not be possible to break this data down by race. From the courts, the work group expects to receive data to allow for an analysis of the ratio of guilty to not guilty pleas (again, not broken down by race) and the proportion of cases found or pleaded guilty, dismissed, diverted (post-charge) by race in Hennepin and Ramsey Counties for the years 2017—2019.¹⁵⁹

The sentencing data that will be analyzed will only be for felonies and will include the number of individuals sentenced to prison and probation by race and offense type for Hennepin and Ramsey Counties, the length of the prison sentence and the length of the probation sentence, the number of probation sentences with jail as a condition of probation, and the length of jail term by race. Finally, the work group expects to be able to examine the revocation of felony probation by race for reasons other than commission of a new felony.

IV. CONCLUSION

DRI conceived of this project in the Summer of 2020. In many ways, Minnesota was very different at that time than it is now. After George Floyd's murder and the protests which immediately followed, it seemed inevitable that the criminal justice system would undergo a transformation because a tipping point had been reached; that seems less certain now. In addition, Sharon, the project convenor, thought that project work would go much more quickly than it has—that we would have completed collecting stories by the Summer of 2021.

By the Summer of 2021, it had become very clear that this project would take considerably more time. Developing meaningful relationships with people who have stories to tell is critical to being able to collect these stories. Developing those relationships takes time. It is critical to design story collection with the recognition that telling stories can be trauma inducing and therefore, resources must be devoted to addressing trauma. Juggling the availability of individuals wishing to tell their stories, along with a pair of story

¹⁵⁹ *Id.* (These judicial districts each correspond to a single county; the second judicial district is Ramsey County, and the fourth judicial district is Hennepin County.).

collectors and an expert prepared to provide trauma first aid, makes scheduling very challenging.

The Authors began this article with the quote from Gail Werrbach, one of the Commissioners on the Maine Wabanaki-Child Welfare Truth and Reconciliation Commission. Sharon keeps this quote taped to her computer as a reminder that the project will take the time that it takes. When the DRI started this project, there were many others who were doing a similar kind of work, but not all have continued.¹⁶⁰

There have been some positive developments during the life of this project including two high profile trials where police officers were held accountable for killing Black civilians. Derek Chauvin was convicted of second-degree unintentional murder, third-degree murder, and second-degree manslaughter¹⁶¹ and pled guilty in federal court to civil rights violations¹⁶² for his role in George Floyd's death. Former Police Officer Kimberly Potter was convicted of first- and second-degree manslaughter charges for the fatal shooting of Duante Wright "making her the third officer in Minnesota to be convicted of killing a civilian while on duty."¹⁶³ In addition, Ramsey County Attorney John Choi announced in September 2021, that his office would "no longer prosecute most felony cases arising from low-level traffic stops, an

¹⁶⁰ See Twin Cities United Way, Minneapolis Foundation, Saint Paul & Minnesota Foundation Commit to Working to Transform Criminal Justice System, INSIGHT NEWS (June 9, 2020), https://www.insightnews.com/news/metro/twin-cities-united-way-minneapolis-foundation-saint-paul-minnesota-foundation-commit-to-working-to-transform/article_ab58b808-aa72-11ea-be9a-af18466ba12e.html [<https://perma.cc/M28R-3YJQ>] (explaining that the Twin Cities United Way, the Minneapolis Foundation, and the Saint Paul and Minnesota Foundations collaborated on what was to be a multi-year effort to driving transformational change in the system).

¹⁶¹ Eric Levenson & Aaron Cooper, *Derek Chauvin Found Guilty of All Three Charges for Killing George Floyd*, CNN, (Apr. 21, 2021, 12:13 PM), <https://www.cnn.com/2021/04/20/us/derek-chauvin-trial-george-floyd-deliberations/index.html> [<https://perma.cc/5A3C-57RC>].

¹⁶² Andy Mannix, *Derek Chauvin Pleads Guilty to Civil Rights Charges in George Floyd's Killing*, STAR TRIB. (Dec. 15, 2021, 9:29 AM), <https://www.startribune.com/derek-chauvin-pleads-guilty-to-federal-civil-rights-charges-george-floyd-killing-minneapolis-police/600127329/> [<https://perma.cc/PM43-GKDM>] (explaining the federal trial of the three former police officers who were at the scene and assisting former officer Chauvin began on January 24, 2022).

¹⁶³ Chao Xiong & Paul Walsh, *Jury Convicts Potter on Both Manslaughter Counts*, STAR TRIB. (Dec. 23, 2021, 6:26 PM), <https://www.startribune.com/jury-convicts-potter-on-both-manslaughter-counts/600129984/> [<https://perma.cc/GA9K-GQTM>].

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effort aimed at reducing racial disparities in the criminal justice system.”¹⁶⁴ Hennepin County Attorney Mike Freeman unveiled plans to create MN HEALS (Hope, Education and Law & Safety) 2.0 based on a 1990’s private-public partnership which was successful in tamping down juvenile offenses by engaging with young people before problems arose.¹⁶⁵ In January 2023, Mary Moriarty, became the Hennepin County Attorney having served previously as the Hennepin County Chief Public Defender (2014 – 2020).¹⁶⁶

Despite these positive signs, the tide appears to be shifting back to a “tough on crime” impetus. In January 2022, “seven suburban mayors wrote a letter asking [Hennepin County Attorney Mike] Freeman to get tougher on criminals and revisit a new policy in which suspects no longer need to post bail for nearly twenty low-level crimes, like possessing a small amount of narcotics and theft under \$35,000.”¹⁶⁷ The Minnesota Chiefs of Police Association requested legislation to require data on felonies that go uncharged by county prosecutors¹⁶⁸ and Senator Warren Limmer, who chairs the Senate’s Judiciary and Public Safety Committee, indicated that he would consider the

¹⁶⁴ Katie Galioto, *Ramsey County Attorney Says He Won’t Prosecute Most Felonies Arising from Low-Level Traffic Stops*, STAR TRIB. (Sep. 8, 2021, 8:47 PM), <https://www.startribune.com/ramsey-county-attorney-says-he-won-t-prosecute-most-felonies-arising-from-low-level-traffic-stops/600095042/> [<https://perma.cc/AVM6-9JH8>].

¹⁶⁵ David Chanen, *Hennepin County Attorney Mike Freeman Defends the Work of His Office*, STAR TRIB. (Jan. 15, 2022, 3:30 PM), <https://www.startribune.com/hennepin-county-attorney-mike-freeman-defends-the-work-of-his-office/600136242/> [<https://perma.cc/A549-8YKW>].

¹⁶⁶ <https://www.hennepinattorney.org/about/welcome/welcome>

¹⁶⁷ Id.

¹⁶⁸ Stephen Montemayor, *Public Safety Policy Debate Taking Shape Ahead of Minnesota Legislature’s 2022 Session*, STAR TRIB. (Jan. 8, 2022, 2:00 PM), <https://www.startribune.com/public-safety-policy-debate-taking-shape-ahead-of-2022-session/600133890/> [<https://perma.cc/8YZF-UC3Z>] (“We are especially concerned that at a time of unprecedented increasing crime rates, prosecutorial policies are failing to hold criminals accountable for their actions,’ the association’s leaders wrote in a letter last month to Hennepin County Attorney Mike Freeman and Ramsey County Attorney John Choi.”).

bill.¹⁶⁹ Even more troubling is the recent shooting by police of Amir Locke during a no-knock warrant.¹⁷⁰

Until the system changes, it is critical that we must not stop.

¹⁶⁹ Id.

¹⁷⁰ Liz Sawyer & Paul Walsh, *17-Year-Old Charged in Homicide That Prompted No-Knock Warrant, Amir Locke's Killing by Minneapolis Police*, STAR TRIB. (Feb. 8, 2022, 8:08 PM), <https://www.startribune.com/17-year-old-arrested-in-st-paul-homicide-that-prompted-no-knock-warrant-leading-to-amir-lockes-death/600144372/>

[<https://perma.cc/9VGL-ZPB5>] (detailing that on February 2, 2022, Amir Locke was shot by Minneapolis police during a “no-knock” warrant for which Mr. Locke was not the target. The investigation into what happened is on-going, but the preliminary information is that Mr. Locke “was sleeping in the apartment of relatives when a Minneapolis police SWAT team burst in shortly before 7 a.m. . . . An officer kicked the couch [on which Locke was sleeping], Locke stirred, holding a firearm He was shot by officer Mark Hanneman . . . within seconds.”).

Appendix A is a simplified map of the major decision and interaction points in the Minnesota criminal justice system. It begins with the first encounter a person might experience—for example, an arrest, interaction with a school resource officer, or traffic stop—and proceeds through the system to the collateral consequences that might follow a person even after their involvement in the system is done. The map shows that there are off-ramps at several points. A person who is arrested may be released by law enforcement or the prosecutor may decline to charge the person with an offense. A person who is charged may be found not guilty, or the charges may be dismissed. But as indicated on the map, nearly every interaction has the potential to result in collateral consequences, even if the person is never convicted of an offense.

This map was developed by Kelly Lyn Mitchell, Executive Director, Robina Institute of Criminal Law and Criminal Justice, and adopted by the Data Collection Work group to guide its discussions.

Appendix B: Data Collection Work group Initial Identification of Data to Request

All data would be requested for the years 2016–2020 and by race, gender and age and would include a relative rate index.

Arrest

- How many incidents do police respond to each year?
 - What kind of incidents are these?
- How many incidents end in an arrest or citation?
 - Who gets arrested and for what offenses?

Booking¹⁷¹

- How many people have been booked into the jail in the past year?
- Who is being booked into jail?
- For what offenses are people booked into jail?
- For what reasons are people released from jail (e.g., 36 hours expires, released on bail, etc.)?

¹⁷¹ The work group was interested in “booking” data and not just arrests because some suspects are cited rather than booked. In addition, many arrests, especially those with weak factual or legal bases, lead to dropping of charges prior to booking.

Charges¹⁷²

- How many cases are referred by law enforcement for prosecution?
- How many cases do prosecutors decline to charge?
- What type of cases are declined?

- How many cases are diverted by offense?
- How many cases are charged by offense?

Bail/Pretrial Release¹⁷³

For cases in which a person is being held in jail:

- How often does the prosecutor oppose release on bail or another form of pretrial release?¹⁷⁴
 - In which types of cases?
- How often does the court's pretrial tool recommend pretrial release?
- How often are people released pretrial?¹⁷⁵
 - How many are released on their own recognizance? [released with no conditions]
 - How many are released with conditions? [electronic monitoring; supervised home release; unsupervised home release]

¹⁷² This data was requested from the County Attorneys' offices. The Hennepin County Attorney has created a dashboard accessible to the public where some, but not all, of this data is readily available. *Data Dashboard*, HENNEPIN CNTY. ATT'Y'S OFF., <https://www.hennepinattorney.org/about/dashboard/data-dashboard> [<https://perma.cc/VK7A-STJ3>] (last visited June 5, 2023).

¹⁷³ Data on bail/pretrial release through sentencing was sought from the courts.

¹⁷⁴ While the work group believes that these types of prosecutorial decisions are important to understanding how racial disparities manifest in the criminal justice system, there are no easy ways to obtain this information. Charging policies are not written and appear to vary by individual prosecutor.

¹⁷⁵ The work group noted that under COVID protocols, the sheriff had authority to make this decision.

- Average number of conditions¹⁷⁶
 - Number of conditional release violations and changes as a result (revocations/conditions tightened)?¹⁷⁷
 - How many are released on bail with conditions or without conditions?
 - How much time spent in jail before being released?
- How many people are held in jail until their case is resolved (no pretrial release)?

Plea Bargaining

- How many cases are offered diversion? How many successfully complete diversion?
- How many people plead guilty versus not guilty?
 - Reduced charges; reduced counts; vertical and horizontal reductions?
 - How often are charges dismissed outright, i.e., for legal and/or factual insufficiency?¹⁷⁸
 - How often are charges amended?¹⁷⁹

Conviction/Pleads Guilty (including all offenses by case type)

- How many cases go to trial?
 - How many result in an acquittal?
 - How many result in a conviction?
 - How many result in a mistrial?
- How many are resolved with a guilty plea?
- How many cases are dismissed?¹⁸⁰

¹⁷⁶ The work group would have preferred knowing the actual conditions imposed by race, gender, and age but recognized that was likely not available without an individual case file review.

¹⁷⁷ The work group hoped that this information might be available in the court's data because it would trigger another court hearing on the record and a new order to do so.

¹⁷⁸ Excluding dismissals as part of a larger negotiation and excluding interim dispositions.

¹⁷⁹ Including charges dismissed as part of a larger negotiation to include a plea of guilty.

¹⁸⁰ Excluding continuances for dismissal or any other interim disposition.

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- How many cases result in a conviction?¹⁸¹
- How many cases result in an interim disposition (e.g., continuance for dismissal, stay of adjudication) instead of conviction?
 - What conditions are ordered by the court?

Sentencing—Initial Imposition

- How many are sentenced to jail?
 - how many sentenced to jail as a “straight sentence”?
 - how many are sentenced to jail only as condition of probation?
 - how long is the average jail sentence?
- How many receive an executed (not stayed or suspended) prison sentence? (How many executed prison sentences are imposed?)
 - How long is the average executed prison sentence?
- How many are sentenced to probation?
 - What is the average probation term?
 - What is the average number of conditions?
 - what conditions are typically ordered?
Including, if possible, who gets other conditions?
- What fine, fees, and restitution are people ordered to pay as part of their sentence?

Community Supervision

- How many have alleged violations while on probation or supervised release?
 - Who is alleged to have violated and for what reasons?
 - How are the alleged violations resolved (i.e., admitted, dismissed, proven at a PV hearing)?

¹⁸¹ Aggregate, including all methods of disposition.

- What sanctions, short of revocation of probation or supervised release, are imposed for the violations (i.e., additional conditions, jail sanction)?
- How many people are revoked for violations on probation or supervised release?
 - how many sent to jail?
 - how many sent to prison?

Completion of Sentence

- How many are discharged from their sentences each year?
- How many have their civil right to vote restored each year because of completing their sentence?

Incarceration (Prison, Jail, or Workhouse)¹⁸²

- How many re admitted to the prison, jail, or workhouse each year?
 - Who is admitted and for what offenses?
- What is the average length of time a person serves in prison, jail, or the workhouse?
- How many receive programming or treatment while in the prison, jail, or workhouse?
 - Who receives which types of treatment?
 - On average, how much additional time do people serve in prison due to disciplinary violations?

¹⁸² This information would not be available through the courts and would need to be obtained via Department of Corrections, for prison data, or from the county sheriffs, for jail data.