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Straight Talk on Police Reform, the Charter Amendments and the Election

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There is much confusion about police reform and the proposed amendments to the Minneapolis City Charter. I will try to clarify what police reform actually is, and then how each of the amendments might help or hinder genuine police reform.

To remove one great source of confusion at the outset, a Department of Public Safety by itself, as I will shortly make clear, is not police reform, nor a substitute for police reform, nor should it be confused with police reform. But depending on what Charter amendments pass and on the subsequent actions of the Mayor and City Council, which I also try to make clear, such a Department could either encourage or hamper genuine police reform.

Police reform is the number one priority of Minneapolis. Not only are citizens being harmed, but if violence and crime are not curbed in this city, business and the well-off will flee to the suburbs, undercutting the tax base and employment and worsening life for all remaining residents. Curbing violence and crime is the job of police, therefore Minneapolis requires an effective police force. It just does not need the dangerous dysfunctional police force it has now, whose undue violence and racism have for decades harmed and alienated many citizens, particularly those of color, and cost the City and its taxpayers millions in damages. Needed is a reformed police force of excellence that this city and its many good officers deserve.

What is police reform?

Police reform is *enduring change in the daily behavior of police on duty* that 1) reduces crime and violence, 2) constantly minimizes police force and racism and treats all citizens ... rich or poor, white or of color ... with dignity and respect, and 3) wins the police the trust and cooperation (a major factor in preventing and solving crime) of the community, particularly communities of color, and thereby garners officers the legitimacy, respect and gratitude they deserve for their courageous service on our behalf. That enduring change of behavior is what police reform is, and those three goals are what that change of behavior must produce to be called police reform.

How achieve police reform?

Police reform requires two big steps: Step 1 is a complete change in policing approach, and Step 2 is a thoroughgoing makeover of officer personnel that retains and hires good officers and removes all unfit and insubordinate officers who will not follow the new approach.

The Minneapolis Police Department presently uses the policing approach predominant throughout the country, self-congratulatorily termed “warrior policing”. It encourages undue police violence and racism. How do we know? Regarding police violence, among developed countries police in the United States kill six times more residents per capita than the second nation, Canada, and 10-20 times more than most European countries, but have no less crime and vastly more murder. Our police are violent but no more effective.

Regarding racism, warrior policing is systemically highly racist even if individual officers are not, because it deliberately and excessively targets black neighborhoods. Black Americans are 2.5 times as likely as white Americans to be shot and killed by police officers. Research shows these black Americans fatally shot by police are no more likely to be posing an imminent lethal threat to the officers at the moment they are killed than white Americans fatally shot by police

People excuse this excess saying that crime is higher in black neighborhoods, and in many it is. But research finds no relationship between crime rates by race and this high racial bias in police killings. White officers dispatched to black neighborhoods fired their guns five times as often as black officers dispatched for similar calls to the same neighborhood. Black residents were more often targeted for use of police force than white residents, even when adjusting for degree of threat posed (armed vs. unarmed; shooting at vs. threatening vs fleeing police; violent vs. non-violent criminal record vs. none). For example, unarmed black men are three times more likely to be killed by police than unarmed white men. And this already unacceptable level of bias may be understated because recent studies find that bias in police administrative records underestimate racial bias in incidents of police force or even mask discrimination entirely.

These facts are how we know the warrior approach is inherently, incorrigibly and inexcusably systemically violent and racist. The warrior approach is aggressive, using any violation no matter how trivial as pretext to search for criminal evidence or behavior; the return is less than 1%, the offended citizens, disproportionately black, 99%. It spends 90% of training time on force and assertiveness, which, oblivious of its failure, is regarded as “strong”. Virtually no training time is spent on respectful interaction with citizens or de-escalating force, both regarded as “weak”. Officers are constantly drilled

that criminals are everywhere and out to assassinate police, and any false move means officers must shoot first to protect themselves.

We have seen ample example of the disastrous consequences of this ill-conceived warrior approach. It is a bad approach that attracts bad apples (public statements, social media remarks, and videos by civilian and police body cameras all suggest white racists a notably higher percentage among police than the general population, a difficult truth about our police that must be faced), and trains our many good apples to act like bad apples. All who support the police ... and everyone should ... must remember, *we do not support our police by blindly supporting bad policing methods and bad officers, we support them by supporting good policing methods and good officers.* We support them by supporting police reform.

State and City officials must recognize that if the policing approach itself is bad, *their current efforts to legislate police reform by banning this or that specific misconduct will fail.* It is the warrior approach and mindset that are the problem, and this will always produce misconduct too numerous to list in any law. It cannot be disciplined or legislated away, it must be replaced. The remedy is a good policing approach that alters the culture and mindset so police know what to do, rather than some inadequate list of what not to do.

The two big steps required for police reform.

Step 1: The new “guardian procedural justice” policing approach. The first step, Step 1, is the need for a superior new policing approach to replace the violent, racist “warrior approach”. Fortunately such an approach is available. It is termed “guardian procedural justice” policing, and research and experience (in the few places it has been firmly installed) have proven it far superior to the warrior approach on every aspect of policing. It is true police reform.

For example, in Camden NJ murder rates have been halved, open-air drug markets eliminated and the solved crime rate raised from 15% to 65%; police use of force and killings have been significantly reduced; and the people of this high-minority, high-poverty and formerly excessively high-crime city (still high-crime but significantly down) have begun to feel safe enough to let their children out of doors, and now trust and cooperate with their police, accounting for the increase in solved crimes.

How does the new approach do it? Not just by initial training but by day-to-day management. The guardian police principle is “do no harm: everyone comes home alive at night, not only officers but suspects and bystanders.” Officers are kept fully practiced in use of force; they must deal with violent people. But unlike warrior training they are equally drilled in interacting with citizens, giving all ... regardless of race or income ...

respect, fairness and “voice”(i.e., full opportunity to tell the officer their side). And they are drilled in de-escalating all unnecessary force, using patience and restraint to maintain control even in tense situations. Any daily incidence of force is debriefed between officer and supervisor, not to find fault but to see if they could have done better, with lessons shared with the rest of the force, a self-improving mechanism. Much more can be found on the internet how this approach works in practice (in particular, bring up J. Scott Thompson, the brilliant chief of police of Camden).

Step 2: Remaking the officer personnel. So we know the superior new policing approach needed in Step 1. What presently stymies reform is inability to take the second step, Step 2, removing officers who are unfit and insubordinate. If the Chief cannot remove them, the dominant warrior-minded officers are free to ignore and undermine the new policing reproach; and experience shows that they do so with impunity. Painful experience ... including experience here in Minneapolis ... shows if the Chief is helpless to remove unfit and insubordinate officers, the new approach goes nowhere, and police reform fails.

Carrying out disciplinary action, let alone firing a police officer, is notoriously difficult in the United States. Union contracts give officers protections that lead to increases in misconduct. In many states, a bill of rights for law-enforcement officers shields personnel from investigations into misconduct. “One thing we need to take a hard look at are those state laws and union contracts that provide either flawed or overly protective procedures that insulate officers from appropriate accountability,” says Seth Stoughton, a former police officer now a law professor at the University of South Carolina.

Forty years ago Mayor Don Frazer tried to remove an officer for blatant misconduct four times, and four times arbitrators and courts returned him to the force. Four years ago Chief Arrodondo tried to end warrior training, but the police union president then offered this training through the union free to any officer. This is not free speech, it is gross insubordination, and yet the Mayor and Chief seemed helpless to fire this union head from the force.

Therefore, if we seriously want police reform in Minneapolis (and wherever else needed in the state), *elected officials of both parties at the city and state levels must mount a frontal attack* to remove these obstructions ... whether in police union contracts, in arbitration and court procedures, or in state laws ... to the Chief removing officers who clearly and repeatedly engage in misconduct that violates the department’s stated policing approach.

Do the proposed Charter amendments help or hurt police reform.

The first two proposed Charter amendments bear on police reform. Despite many good points both are flawed. The flaw in amendment #1 is merely exasperating. It is a great

improvement in city governance and can confidently be voted for, but, annoyingly, it doesn't complete the job. More will have to be done, now or later. The flaw in amendment #2 is more serious. Depending upon a number of factors that I will attempt to make clear, it could work strongly for or against police reform and public safety.

Amendment #1: the "Government Structure" amendment: This Charter amendment does a great good. It would finally end the City's long-standing severe "14-boss problem" (explained below). The 14-boss problem has hamstrung and retarded city operations and raised costs to taxpayers for decades. Ending it would be a long-sought great advance in City governance. If the highest priority problem for Minneapolis is police reform, the second-highest is ridding the City of its so-called 14-boss problem. The police issue has recently become highly visible to citizens. The 14-boss issue, equally in need of reform, unfortunately remains almost invisible.

The 14-boss problem arises because with the exception of the police department the current Charter is a "strong council/weak mayor" system: it gives Council members executive as well as legislative authority over city departments. The one exception is the police department where the reverse is true: the flawed Charter denies the Council ... properly the city's legislative body ... any role, legislative or executive, in the police department. Instead it gives the Mayor "complete control", not only executive authority but sole legislative authority. So, oddly, for the police department ... this one department only ... the City has a 'strong mayor/weak council' system. For all other departments it is a "strong council/weak mayor" system.

Both these systems are defective ... the strong council stultifying and cost-raising (see below), the strong mayor undemocratic. The proper and effective governance structure is neither "strong council/weak mayor" nor "weak council/strong mayor", but rather a "legislative council/executive mayor" system. This system, properly, separates and concentrates executive power in a single elected chief executive having no legislative authority, and separates and concentrates legislative power solely in a representative elected body having no executive authority. This well-proven "separation of powers" is used by virtually all cities and all higher levels of our government.

What is the problem with the current Charter's 'strong council/weak mayor' system, and why is it called the 14-boss problem? In principle under the present Charter, department heads are supposed to report for executive direction to specific Council committees. Making executive decisions by committee is a bad idea to begin with, it is highly sluggish and inefficient when rapid decisions are needed. But much worse, department heads strongly complain (to see these complaints, see online "Charter Commission interviews with Minneapolis department heads") that ... because the Charter gives Council members authority to vote out any department head (an executive function and a potent threat) ... in practice, any Council member feels free to wander into any department and

make demands on the department head, including demands for which there is no ordinance or are even counter existing ordinance.

In effect, each department head has 14 different bosses giving orders, the 13 elected Council members and the Mayor (who has little more say than a Council member). And regularly one or more of these bosses disagree with others. A department head will find himself whipsawed between conflicting directives of contending Council members engaged in power plays, even playing departments against each other, and is unable to do the work of the City authorized by ordinance, often with attendant loss of department morale. Instead, department heads must spend inordinate time and expense trying to wangle agreement between contending Council members before a department can act. The system works passably on routine department operations but not contentious ones, and it regularly paralyzes the City in times of crisis, viz the violence after George Floyd's murder. No effective enterprise can operate with multiple chief executives. Amendment #1 ends the 14-boss problem by moving the City to the standard separation-of-powers "legislative council/executive mayor" system described above, concentrating executive authority in the Mayor and legislative authority in the Council.

However, the amendment is flawed. It does not complete the job. It places all departments on this effective new structure but one, the police department. It removes executive authority from the Council for all departments, but it does not restore legislative authority to the Council for the police department. The mayoral "complete control" language of the current Charter was left intact. This glaring flaw leaves the police department with its present strong mayor/weak council structure. This strange undemocratic arrangement does not separate powers. It denies the Council, the city's legislative body, ability to pass ordinances governing the police department, and gives the Mayor in addition to his proper executive authority, sole legislative authority over this one department.

This flaw is exasperating, both in principle and practice: In principle, because it holds up completing the desired legislative council/executive mayor structure for all City departments including the police. In practice because, had it completed the job by including the police department ... establishing the same legislative council/executive mayor system giving proper separation and balance of powers between Mayor and Council that it does for all other departments ... this could be a big help (see later below) overcoming the current impasse in police reform. But, oddly, it excluded the police department, the sole exception.

Thus amendment #1 would be a great advance in efficient effective operation of the city by ending the 14-boss problem and establishing proper separation of powers for all of the City's many departments except the police department. This is powerful reason to vote for amendment #1. There is no downside: that it does not complete the job for the police department is not a reason to vote against it, it vitally advances good City gov-

ernance for all remaining departments. It just means we will have to find other ways, now or in the future, to complete the job for the police department. Which brings us to amendment #2

Amendment #2: the “Department of Public Safety” amendment. Like amendment #1, this amendment also has good features but is also flawed, and the flaw is more serious. It could advance police reform and city safety and governance, or it could seriously endanger them.

It is important to realize that much of the rhetoric around amendment #2 creates the illusion that it is in itself police reform. It is not. In fact such an illusion will distract and drain energy from the actual work needed for police reform. Amendment #2 is not police reform because it has no provision or means to remove insubordinate officers from the force (Step 2 of police reform), without which police reform is impossible. Removing these obstacles to Step 2 of police reform is the real work that needs done, and can be accomplished with or without a new Department of Public Safety. Indeed the added burden of having to set up such a brand new department from scratch may greatly delay police reform. So citizens’ desire for police reform is not in itself reason to vote for or against amendment #2. But there *are* good reasons to vote for or against this amendment on other grounds, which I now discuss.

The most compelling reason to vote for amendment #2 is that it finally gives the Council legislative authority over the police department, a good thing. So if amendment #1 and amendment #2 both pass, the Council will finally have legislative authority over all departments but executive authority over none, and the Mayor will have executive authority over all departments and legislative authority over none. In short, the combination of the two amendments together moves the City entirely to the well-proven legislative council/executive mayor system with its proper separation of powers. The great risk is that if amendment #2 passes and amendment #1 does not, then all we will have done is extend the 14-boss problem to include the police as well as all the other departments. And that will frustratingly bog down the police department (and police reform) and any new Department of Public Safety, just as it has all the other departments for years.

Most moderate Council members and candidates supporting amendment #2 claim they will just move the current police department into the new Department of Public Safety as one of its agencies, and take on police reform thereafter. This would satisfy amendment #2’s requirement to abolish the police department in 30 days, but it solves nothing. Minnesota labor law does not permit firing workers and rehiring them in a new agency to break an existing union contract; it is an unfair labor practice. Therefore to put the same dysfunctional police force, that will remain under the same dysfunctional police union contract, in a new agency under a new name, free to continue its violent, racist misconduct, is not police reform.

Worse, some activist Council incumbents and candidates have expressed support for defunding or abolishing the police altogether and using the remainder of the police budget on clearly worthy causes such as affordable housing, domestic violence prevention, education, and food security. In the long-term future, if done adequately (a big if), these measures might help reduce crime and violence. But in the present, they give negligible help controlling present crime and violence. Nevertheless in June 2020, 9 of the 13 elected Council members pledged to “defund the police”. However, the goals of their pledge never got defined and the vague effort largely collapsed in the following months.

The anger of activist citizens and Council members at the present bad police force is fully justified. But to weaken or abolish the present force, bad as it is, is *utter folly*. Activists ought deeply rethink their approach: they need a police strategy of reform rather than vengeance. A bad police force is bad enough, but a weakened or abolished force will leave the public, particularly communities of color, seriously or totally unprotected from violence and crime. Polls show a majority of Minneapolis city residents, and especially the great majority of the black community, oppose a reduction in the city’s police force.

In sum:

A.) If you accept the premise that it is high time this city abolish its decades-old defective 14-boss system in favor of a legislative council/executive mayor system with its proper separation of powers, then you should certainly vote for amendment #1, no matter whether you are for or against amendment #2. The City would operate vastly better.

B) If you are for amendment #2, then you should certainly also vote for amendment #1. Otherwise, if you do not, you will not only have left all other departments saddled with the existing 14-boss problem, you will have now extended that same 14-boss problem to the police and any new Department of Public Safety as well. You will have hamstrung them all. But if you do vote for both amendment #1 and amendment #2, by this combination (as noted above) you will have extended the legislative council/executive mayor system to the police and any new Department of Public Safety, as well as all the other departments. You will have completed the job.

Accomplishing police reform.

As noted, police reform consists of the two steps, 1) remake the policing approach, and 2) remake the officer personnel. We know how to do Step 1: replace the violent, racist warrior approach with the superior new guardian procedural justice approach. But Step 1 is impossible if the Chief cannot do Step 2, remove warrior-minded officers who will ignore and undermine the new approach. Therefore the focus of action should be on Step 2.

There are several actions that might help accomplish Step 2. The first big need is to shine the light of day on actual police misconduct, and the bad apples who continue on the force, to raise public awareness and outrage that will bring serious pressure for reform upon elected officials.

— State and City officials are not helpless against the difficult existing obstacles to Step 2. At a minimum they can begin with the power of the bully pulpit, and they should be doing so relentlessly on all occasions, publicizing 1) that police reform is the number one problem of Minneapolis, and likely needed in other first-class Minnesota cities, 2) publicizing what police reform really is and the two big steps needed to get there, and 3) publicizing that we honor and support our police by supporting good policing methods and good officers, not by tolerating bad policing methods and bad officers. These efforts should be joined by the media, business and labor groups.

— Citizen legal suits and media investigations can be important tools to expose to the public the lack of disciplinary action against bad apple officers and its causes, which will bring pressure for reform on the Mayor and Council.

— Citizens in the coming and future elections can look for incumbents and candidates who a) show they understand what police reform actually is and hold it their number one priority, and who b) publicly pledge they will launch a continuing all-out assault, using all means necessary including going to the State, to accomplish Steps 1 and 2.

— The Council can sue for legislative authority. The legislative council/executive mayor system is more likely to produce action because the Mayor and Council can now legally push each other. According to the present City Attorney, the current Charter phrase “complete control” means that a strong mayor/weak council system obtains for the police department, and the Mayor alone has complete authority and responsibility for the police department and reform. However, contrary to the present City Attorney, the previous City Attorney declared in a written opinion that consistency with other Minnesota law and court decisions demands that the Charter phrase “complete control” be read to mean only complete *executive* control, and that the Council does hold *legislative* authority for the police department like any other department. In other words we have dueling City Attorney opinions! Therefore if amendment #2 does not pass, an aggressive Council could take the matter to court to adjudicate whether it holds legislative authority over the police or not under the present Charter.

— The Mayor and Council can take action. Even if the Council is denied the legislative authority that a legislative council/executive mayor system would unambiguously provide, it can still be strongly active and push the Mayor and State legislators. It still has investigative authority, and can hold hearings and uncover and publicize why so much police misconduct is being hidden from the public under the term “coaching”, and why

discipline is not being given officers who consistently engage in well-proven misconduct. The current Mayor and Chief presumably have power to alter this. The Council can inquire why they haven't, what prevents them? Further, if the Council deems a Department of Public Safety a good thing, it could have one designed and bring the finished product to the voters for the next election, unlike the nebulous entity that amendment #2 brings to the voters in this election.

— Mount a task force. Nevertheless the chief focus must be on Step 2. Identifying the poorly understood obstacles to Step 2 is a technical and political task requiring a considerable mix of experts. Responsible leaders could appoint an expert task force to 1) identify and publicize (more light of day) all obstacles that compromise the Chief and Mayor's ability to remove unfit and insubordinate officers, and 2) devise technical solutions and the political actions necessary to eliminate these obstacles. These solutions must maintain proper labor protections for conscientious officers from arbitrary discipline in their demanding work, but stop protecting bad apple officers with persistent well-proven unacceptable misconduct. The best person to call such a task force might be the Governor, because Step 2 will require changes in State law as well as City ordinances, and police reform is larger than just Minneapolis. The Business Roundtable and labor leaders and organizations wishing to protect against business, jobs and the well-off fleeing the city, could take a strong hand in seeing to such a task force. With task force report in hand, City officials and private leaders can act on the recommendations for the City and can vigorously and persistently press the State legislature and all other parties identified by the task force to take the actions recommended for each.

— Finally and devoutly to be desired, is for our conscientious officers to step up and recognize the blot these bad policing methods and officers have placed on them and their profession so vital to public safety. Police unions should be a force leading, not blocking, police reform. Good officers should organize to elect union and other police leaders who will help the police profession, including its unions, lead police reform themselves, to bring about the kind of police force they can be proud of, earning the kind of public trust and respect that they, and the people whom they serve and protect, deserve. ■

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