Conference on Democratic Policing

November 12–13, 2015

NYU | LAW

List of Participants

Art Acevedo, Chief of Police, Austin, TX

Hassan Aden, IACP Director of Research;
Former Chief of Police, Greenville, NC

Jane Castor, Chief of Police (Ret.), Tampa, FL

Melanca Clark, Chief of Staff, COPS Office,
U.S. Dept. of Justice

Deb Gramiccioni, Executive Director, Center on the
Administration of Criminal Law, NYU School of Law;
Former Federal Prosecutor

Nancy Hoppock, Ass't Deputy Commissioner,
Risk Management Bureau, NYPD

Chris Magnus, Chief of Police, Tucson, AZ

Anne Milgram, Senior Fellow, Center on the
Administration of Criminal Law, NYU School of Law;
Former Attorney General, NJ

Sylvia Moir, Chief of Police, El Cerrito, CA

Sue Rahr, Exec. Director of WA State Criminal Justice
Training Commission; Member, President's Task Force
on 21st Century Policing

Chuck Ramsey, Police Commissioner, Philadelphia, PA;
Co-Chair, President's Task Force on 21st Century Policing

Laurie Robinson, Clarence J. Robinson Professor of
Criminology, Law, and Society, George Mason University;
Co-Chair, President's Task Force on 21st Century Policing

Andy Schaffer, Adjunct Professor at NYU School of Law;
Former Deputy Commissioner, Legal Affairs, NYPD

Darrel Stephens, Director of Major City Chiefs;
Former Chief of Police, Charlotte-Mecklenburg, NC

Scott Thomson, Chief of Police, Camden County, NJ

Diane Urban, Chief of Police, Hayward, CA

Roberto Villaseñor, Chief of Police (Ret.), Tucson, AZ;
Member, President's Task Force on 21st Century Policing

Policing Project

Barry Friedman, Jacob D. Fuchsberg Professor of Law,
NYU School of Law

Maria Ponomarenko, Policing Project Fellow,
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On November 12–13, fifteen police chiefs and other law enforcement leaders from around the country gathered at New York University School of Law for a closed-door conference organized around the theme of "Democratic Policing."

Anne Milgram of the Arnold Foundation set the tone for the conference with her opening comment—evoking the famous principle of the patriarch of modern policing, Sir Robert Peel—that she "grew up believing that the police are the community, and the community are the police." The focus of the discussions that followed was on how to strengthen the relationship between the community and the police to ensure that this was indeed the case.

Over the course of two remarkable days of frank and open exchange, participants discussed the importance of fostering more robust engagement between police and the communities they serve; the need for better metrics of policing success and the data necessary to make these assessments; and the possibility of policing agencies adopting transparent rules and policies with public input.

In order to encourage candid discussion, the participants agreed in advance that there would be no attribution of any particular individual's views. At the conclusion of the gathering, however, participants expressed an interest in releasing a report highlighting the key points of discussion along with a set of principles for moving forward.

The following report summarizes the conversations that took place, following in the sequence of the conference discussion. So as to best capture the tenor of the gathering, much of the summary is offered in the participants' own words.

Session One:
Community Engagement

The opening session of the conference was on "community engagement." In its Final Report, the President's Task Force on 21st Century Policing stressed repeatedly the need for police to "engage" with the community in order to restore trust. The impetus for the discussion was the observation— shared by the participants in the room—that by community *engagement* the Task Force had in mind something different from community *policing*. Conversation began with a discussion of what community engagement is, and then turned to the much harder question of how to bring it about.

Task Force co-chair Laurie Robinson (who was one of four Task Force members in attendance) touched off the discussion by explaining that although community policing has been a fixture of the American landscape for several decades, community engagement demands more. What the Task Force envisioned was engagement at a "higher level" where police are "coproducing public safety with the community." Her co-chair, Philadelphia Police Commissioner Charles Ramsey, added that much of community policing happens "at the bottom"—through interactions between individual officers and members of the public—but that it is essential to also have engagement "at the top" where "policy decisions are made."

Everyone in the room agreed—and acknowledged that the truly difficult question was how to make community engagement happen. On this question, unfortunately, there was not clear direction. One of the participants captured the sentiment in the room when she asked: "If there is a playbook for community engagement, can you please tell me what it is? And if not, can we come up with it here?"

One of the most difficult questions facing departments is knowing who speaks for "the community"—or more accurately, for the many communities with which police ought to engage. A number of the chiefs remarked on the fact that they often hear from the same ten people who show up to community meetings, but that they cannot be certain those voices represent the views of all of the community members who depend on the police for services.

Concern with discerning the sentiments of the community as a whole dominated much of the discussion. Although a number of chiefs initially suggested that silent community members generally supported what the police were doing, the conversation soon shifted toward recognition that at least in some

communities, this was not necessarily the case. "If we go with this idea that there's support for police in this community, where are they speaking up now? Why aren't we hearing from them? Because there may be a lot more ambivalence with those populations as well." The point was made that: "There are communities that have revoked consent to being policed." Part of the reason for this, some participants observed, is that historically the "police have not always stood on the right side of justice as we define justice today. That's baggage. And we carry it in some communities more than others. We need to understand the history we're up against."

Ultimately, the chiefs recognized that they need to do a better job of engaging with the many communities that they police. But they also stressed that "engagement is a mutual responsibility" and that communities must play a role as well. "Police are taking steps forward; where is the call to the community about what they're responsible for?" A number of chiefs also expressed frustration that by virtue of being public and accessible, police officers often bear the brunt of public dissatisfaction with failure of government more generally, particularly around education and mental health. Still, participants sounded a hopeful note: one of the benefits of more robust community engagement would be to create a forum for police to educate their communities about the sorts of challenges they face and to urge community members to get involved.

The session concluded with much left unresolved—but the issues that the chiefs identified framed the discussion for the sessions that followed.

Session Two:
The Metrics of Success

The second session was devoted to data, metrics, and officer evaluation. The jumping off point for the discussion was the observation that policing had changed from a reactive model based largely on solving crimes after they occurred, to a new proactive model focused on deterrence, prevention, and on building community trust. Under the old policing, departments could evaluate their effectiveness with easily quantifiable metrics like arrest, clearance, and crime rates. But how, in the new policing, does one measure success?

The session began with a discussion of data. Participants identified three critical issues for departments to address: context, aggregation, and resources. As one of the chiefs emphasized, "data on a whole host of things is not neutral." Depending on "how it is framed and the context in which it is delivered, … data has different meanings and values."

Not only does data have to be seen in context, but to get the whole picture it also is important to aggregate existing data across government agencies and across the criminal justice system as a whole. Finally, a number of chiefs voiced concern over resources—namely, that requiring officers to collect more and more data would take them away from carrying out their primary responsibilities.

The conversation then turned to the difficulty of measuring success in the new policing environment. "We need to think about what success is. We thought it was crime stats, low numbers. But now we have historically low numbers, and still we have all these issues." "We are very good at establishing metrics that are easy. But how do you measure important, intangible things, like community trust?" Conferees suggested some possible models for doing so—such as RespectStat, a twist on CompStat that Chicago and other jurisdictions have implemented to track residents' perceptions of their interactions with police officers—but agreed that such efforts are still in their infancy.

Many in the room observed that the metrics problem is equally perplexing at the level of individual officer performance. Officers are used to being evaluated on outputs—like stops or arrests—but what is needed are measures of outcomes, including public safety and community satisfaction: "Outcomes are more important." Developing these metrics is essential: until "officers know they're going to be judged by their relationships in the community, they won't put the effort in." Several chiefs noted they were struggling to develop new evaluations that fairly captured the job that officers are being asked to do. Others suggested that at least part of the answer may be in shifting attention away from evaluation and toward training and supervision: "The more that it's attached to a number, the more the supervisor moves away from leadership. We can't cure supervision problems with a new evaluation."

Participants also urged a new turn toward after-incident training rather than discipline. "We need a culture where people learn and step forward instead of becoming bitter and serving three day suspensions." Participants cited the SWAT model, where after-action reports and evaluations are the norm, and described efforts to extend that approach to policing generally: "We are trying to build this into the academy. Expect mistakes, as long as people are willing to learn. If we build it into the culture it will be transformative." Others pointed to the Police Foundation's "Near Miss" reporting system, which provides a forum for officers to share close calls and learn from each other's experiences.

The group discussed body-worn cameras (BWCs) with continuing officer education in mind. Throughout the conference participants had expressed concern that although there is value to BWCs, there had not been full recognition of the many challenge their use presented. But all saw the value of BWCs for training. "We are in an exciting position to use the technology not just in a reactionary way to validate or dispute a complaint, but in a thoughtful and collaborative way to discuss with officers and groups of officers what and how they're doing."

Session Three:
Democratic Rules

The next morning began with a presentation on a core idea of the Policing Project: democratic rulemaking for policing. Barry Friedman opened the discussion by observing that most executive branch agencies are governed in a way that policing is not: with rules or policies that are (a) written down with some specificity before officials act; (b) formulated with public input; and (c) publicly available. This sort of public rulemaking is what gives much of government its democratic legitimacy. The question was whether this could work for policing.

Policing departments already operate with many rules. Many aspects of policing are governed by court decisions. Policing agencies have extensive department manuals, directives, and standard operating procedures. And there are outside bodies that impose requirements or review police actions, like Inspectors General, court-appointed monitors, and civilian complaint boards. But as one of the participants acknowledged early on, these rules often are formulated "behind closed doors. It's inside baseball."

The chiefs expressed great interest in the idea of public rulemaking, acknowledging that involving community members in policymaking could actually have tremendous advantages for their departments while also going a long way toward building trust and legitimacy.

A core insight that framed this part of the discussion was that "democratic rules" could be drafted by the police themselves, and then presented to the public for consideration and debate. This is precisely how rules and policies are adopted throughout executive government, whether through notice-and-comment rulemaking or more informal hearing procedures.

As one of the chiefs observed, when it comes to what the police do, "it either gets scrutinized at the front end or at the back end." By engaging in a more public and transparent policymaking process at the front end, police chiefs can preserve their ability to apply their hardfought expertise to policing, while securing greater buy-in for the rules they ultimately adopt. The chiefs also discussed how public engagement could help make their policies stronger. For many of the policies that are now the subject of public discussion, "we would be strengthened if we had public discourse about what our policies should be."

From there, the conversation turned to the concededly difficult questions surrounding implementation. A necessary first step would be to determine the policies on which to seek input: "ninety percent of policies are ones no one cares about." Another potential hurdle is the need for secrecy, which is more acute in the policing context than elsewhere in executive government. For example, you "don't put an active-shooter policy online." But ultimately the chiefs agreed that lines could be drawn. Indeed, there was great consensus around the value of transparency. One of the chiefs mentioned that his department recently put its directives online, with sensitive issues redacted: "The first cut was nothing but black lines. In the end, though, it was some redactions, not many, and for each omitted section we included an explanation of why."

Another challenge in this area is resources: both to write the rules departments need and to conduct the sort of public input process that the chiefs agreed would be worthwhile. "A lot of police departments subscribe to services where they get policies ready-made. They say you should tweak them, but that is extraordinarily difficult." And particularly in the larger jurisdictions, departments could easily become overwhelmed with comments: "If you get one million comments, how will you respond? We have to make this operational."

Finally there is the matter of figuring out how to structure the feedback process to ensure meaningful input from all of the relevant stakeholders. As with community engagement generally, departments may need to experiment with a range of approaches that are tailored to their communities' needs. In doing so, departments should take care to include line officers and their union representatives in the process. The union is a key stakeholder: "If you don't have their buy-in you don't have one leg of a three-pronged stool." At the same time, the job facing chiefs is "helping unions understand that their salaries and mayoral support come from a high degree of customer service," which includes public engagement.

While acknowledging these and other difficulties, participants shared a number of valuable ideas for how public input could be solicited around rules. One of the conferees cited AmericaSpeaks, a program that a number of jurisdictions have used to seek public input on a variety of issues, including public safety. The model combines real and virtual town halls with moderated discussion and opportunities for electronic voting.

Another promising approach is to structure public feedback through a "referendum-type" process. Instead of confronting the public with a multi-page policy, departments could pose specific questions on the important or controversial points, like whether officers should hand out receipts following investigative stops. "Otherwise it's too complicated for people to understand the legal principles."

Conclusion

At the close of the second day, the group gathered for a final session to reflect on the two remarkable days of discussion and sketch out an agenda for the Policing Project and the conference participants to pursue. The Policing Project is already working on some of the proposed projects and will roll them out over the coming months.

The group also took the opportunity to think more broadly on the theme of Democratic Policing and the importance of both defining and aspiring to its ideals: "What is it? How do you know when you've achieved it?" Officers already are trained to operate within constitutional bounds, "but we don't give them an understanding of the role of police in a democratic society. … How do you know when you've reached the ideal of democratic policing?" That broader conversation, the group emphasized, needs to involve everyone who wants to participate. "Then we wouldn't have the problems we have now." ★