# Constitutional Policing as a Cornerstone of Community Policing

A Report by the Police Executive Research Forum, April 2015

COPS
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Police Executive Research Forum

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# Acknowledgments

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We would also like to thank all of the police leaders, scholars, federal officials, and other professionals who participated in our December 11, 2014 conference in Washington, D.C. (for a list of recipients, see appendix A). Their insights prompted a thoughtful and forthright discussion about how to build strong relationships of trust between the police and the communities they serve.

Finally, credit is due to PERF staff members who conducted interviews, prepared for and hosted the COPS Office/PERF conference, and wrote and edited this publication. First and foremost, Research Associate Elizabeth Miller conducted research and interviewed police leaders to develop the topics that were discussed at the conference, and she carefully organized and captured the discussions as she wrote this publication. Director of Technical Assistance Jessica Toliver provided guidance, management, and research support; Director of Communications Craig Fischer provided advice and edited this report; and Research Assistants Sarah Mostyn, Jacob Sena, and Matthew Harman completed countless tasks, large and small, that contributed to the success of our December conference.

# Introduction

"The post–Ferguson environment is one of the most unusual situations in policing in the last 30 years. There has been a crisis, and many people have lost trust in the police. But on the plus side, we have some of the strongest leadership that I have ever seen in policing. So we have the capacity to make changes to strengthen our relationships with the community. The challenge for us is to make sure that relationships between police and community get better and, at the same time, that crime rates go down. We owe this to the communities we serve."

—COPS Office Director Ronald L. Davis

The last year and a half have been the most challenging for policing in recent memory. The events in Ferguson, Missouri, sparked a wave of protests across the country, and subsequent uses of police force in other cities kept policing practices at the forefront of the national consciousness.

This challenge has also been an opportunity for law enforcement—an opportunity to both effect positive change within the profession and find new ways to strengthen relationships between police departments and the communities that they serve.

On December 11, 2014, the Police Executive Research Forum (PERF), in partnership with the U.S. Department of Justice's (DOJ) Office of Community Oriented Policing Services (COPS Office), convened a conference in Washington, D.C., entitled "Constitutional Policing as a Cornerstone of Community Policing."

Police executives, federal officials, academics, and civil rights leaders came together at this one-day conference to develop strategies for promoting constitutional policing as part of the day-to-day work of policing.

Policing must be done in a manner that is lawful and constitutional, but also in a manner that maintains the consent of the people. We have to ensure that when we deal with crime and other issues that negatively impact people's lives, we do so in a way that is consistent with the wishes of the people who are most affected by crime.

—Camden County (New Jersey) Police Chief Scott Thomson

"This post–Ferguson period is a critical time in our profession for us to come together with our communities. Sometimes people have a tendency to circle the wagons and take a defensive stance. I think that's the wrong move. We have to keep our minds and our ears open. We need to listen to what's being said, because we need the consent of the people. If we get this right, we can work with the people to define what our role will be moving forward, and how we will police for years to come."

—Montgomery County (Maryland) Police Chief Thomas Manger

At its most fundamental, constitutional policing is legal policing—that is, policing that operates within the parameters set by the U.S. Constitution, state constitutions, the body of court decisions that have interpreted and spelled out in greater detail what the text of the Constitution means in terms of the everyday practices of policing.

Which constitutional issues are most important for policing today? One way of answering that question is to identify the policies and practices that most frequently are called into question from a constitutional standpoint.

## Key issues in constitutional policing

In 1994, Congress passed a law giving the DOJ authority to investigate state and local law enforcement agencies that it believes may have unconstitutional policies or may engage in unconstitutional patterns or practices of misconduct. At the 2014 COPS Office/PERF conference, the top DOJ officials in charge of these investigations identified the police policies and practices that are most often the subject of investigations for unconstitutionality. These issues include the following:

- Police use of force
- Racial bias and other bias in policing, including "implicit" bias
- Unlawful stops, searches, and arrests
- Police interactions with persons with mental illness[1]

These issues most often play a role in DOJ investigations of local police agencies for constitutional violations. All four issues were discussed at the 2014 COPS Office/PERF conference. Those discussions and their subsequent analyses are summarized in this report. This report also summarizes the views of leading police chiefs and other experts on the following issues:

- Identifying strategies for ensuring that police agencies meet current standards of constitutionality, and anticipating future standards regarding issues of technology and other new developments constitutionality the courts have yet to define
- Considering constitutionality on a deeper level, by developing policies and practices that truly advance the broad constitutional goals of protecting everyone's rights and providing equal protection under the law
- Striving for high levels of perceived legitimacy by the public; i.e., ensuring that policing is conducted with the consent of the people

## Uncharted territory: police technologies

There is a wide range of unresolved issues regarding the constitutionality of various new police technologies. Many technologies are so new that the court system has not had time to rule on their constitutionality; court decisions must await the development of cases and legal challenges. In some instances, different state and federal courts have handed down conflicting rulings. Even in situations where the courts agree, it does not mean that the applicability of their rulings is clear for all the various uses of new technologies. In one notable case, the U.S. Supreme Court in 2012 issued a ruling on using electronic tracking devices to monitor the whereabouts of criminal suspects, yet experts remain unclear about the extent of the case's implications.[2]

Thus, on issues of new technologies, police today are often experimenting with little or no guidance from the courts about the constitutionality of their actions. In coming years, many of these constitutional issues will be explored by lower courts and eventually by the Supreme Court.

## "The Constitution is our boss"

Participants at the conference agreed that the mandate of the police is to serve as guardians of the Constitution and to protect the rights of the people they serve. "The Constitution is our boss," said New Haven (Connecticut) Police Chief Dean Esserman. "We are not warriors, we are guardians. I tell my new recruits that the oath they take is not to me. The oath is to the Constitution. I take the same oath. The boss is the Constitution."

1. *Civil Rights Investigations of Local Police: Lessons Learned*, Critical Issues in Policing Series (Washington, DC: Police Executive Research Forum, 2013), http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

2. Eric Tucker, "GPS and Other Tech Advances Expose Fissures in Law Enforcement and Court," *Inc.*, June 16, 2014, http://www.inc.com/associated-press/gps-tracking-case-left-unsettled-questions.html.

Constitutional policing, therefore, is the foundation of community policing. It is impossible for law enforcement agencies to form positive and productive relationships with the communities they serve if those communities do not trust the police, or if the communities do not believe that the police see their mission as protecting civil rights as well as public safety.

### Constitutionality and legitimacy

"What we need to understand is that 'constitutional policing' is both foundational and aspirational for the police. The Constitution, in other words, provides both the basic legal framework within which we operate and the larger ethos which we strive to embody."

—Retired Madison (Wisconsin) Police Chief Noble Wray

The term "constitutional policing" is often used in a limited context, in terms of deciding whether a certain policy or practice by a police department, or a particular officer's actions in a certain situation, adhere to the requirements of the U.S. Constitution and state constitutions, as defined in opinions handed down by the courts.

The post-Ferguson protests that have occurred nationwide prompted the COPS Office to engage law enforcement executives in a discussion about how constitutional policing should inform law enforcement strategies and program implementation in a more comprehensive way. Too often, discussions about constitutional policing occur only "after the fact"—as police officials, community members, and the courts look back at an incident and decide whether police actions fell within the rules and guidance laid out in court precedents and the text of the Constitution.

There is a growing recognition among police leaders that constitutional policing is a concept that should be on the minds of police officers, supervisors, commanders, and department leaders on an everyday basis. And rather than focusing only on the narrow question of whether a particular action by an officer can survive legal scrutiny, forward-thinking police leaders are reviewing their policies and practices to ensure that they not only promote community policing and crime reduction, but also advance the broad constitutional goal of protecting everyone's civil liberties and providing equal protection under the law.

Participants at the 2014 COPS Office/PERF conference agreed that often there is a gulf between policies and practices that meet the minimum requirements of the Constitution and those perceived as legitimate in the community.

The policing profession has paid a great deal of attention in recent years to the concept of legitimacy. Legitimacy is the extent to which the community believes that police actions are "appropriate, proper, and just."[3] If the police have a high level of perceived legitimacy in a community, members of the community tend to be more willing to cooperate with the police and to accept the outcome of their interactions with the police. As a result, legitimacy is important not only for its own sake, but also because success in achieving key goals (such as reducing crime rates) can depend largely on whether the community supports the police.

Thus, constitutional policing and legitimacy in policing are related concepts, but they are not the same thing. Constitutional policing is necessary but not sufficient; it is a baseline standard. If a police department engages in unconstitutional policing, it can be taken to court and forced to change its policies or practices. And a court will state, one way or the other, whether a given policy or practice is constitutional or unconstitutional.

Legitimacy is a more relative concept. A police department may have varying degrees of legitimacy over time, which can be measured, for example, by surveys that reveal the percentage of community members who believe that a police practice is legitimate, and/or the overall perceived legitimacy of its operations. Certain practices of a police department may be considered legitimate, while others are not. What is more, a given department may have high levels of perceived

3. According to Dr. Thomas Tyler, legitimacy is "a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just." Tom R. Tyler, "Psychological Perspectives on Legitimacy and Legitimation," *Annual Review of Psychology 57*, no. 1 (2006): 375–400.

legitimacy in some neighborhoods or among some demographic groups, but much lower levels of perceived legitimacy among other groups.

Even though legitimacy is a relative term, police agencies must constantly strive for greater levels of perceived legitimacy among their various communities. As Columbia Law Professor Jeffrey Fagan said at the COPS Office/PERF conference, "You can have lawful policing that is perfectly by-the-book constitutionally, and still be perceived as being illegitimate."

## The critical importance of leadership

The past year has presented a tremendous challenge to police. Protests that erupted across the country in the wake of events that occurred in 2014 in Ferguson, Missouri; Staten Island, New York; Cleveland; and other cities called into question the constitutionality and legitimacy of police practices. For many community members, the role of the police described above—as guardians of the Constitution and of everyone's civil rights—seemed at odds with images they saw, on television and online, of police uses of force and responses to major demonstrations.

For law enforcement agencies, this challenge is an opportunity to take a hard look at their policies, practices, and culture; to engage in an open dialogue with the community about what they need from the police; to identify and correct past missteps; and to rebuild relationships of trust and understanding with the communities that they serve.

> "In terms of leadership, from the top to the bottom of the agency, the importance of constitutional policing has to be clear. Constitutional policing doesn't exist unless there is a conscious effort, a conscious decision from the highest ranks down to the new recruits, to think about what constitutional policing means."
>
> —New York City Police Department
> First Deputy Commissioner Ben Tucker

Participants at the 2014 COPS Office/PERF conference agreed that it is the responsibility of police leaders to push for change. The leaders of a police agency determine the agency's culture, policies, and practices, so they must be the ones to institute reforms and lead transformation efforts.

At the same time, effecting change is not possible without "buy-in" from the rank and file. Officers need to believe in the goals and mandates of their departments, and they must be given the tools to police constitutionally. Retired Palo Alto (California) Police Department Lieutenant Sandra Brown, the principal trainer with Fair and Impartial Policing, LLC,[4] said, "It is the officers on the streets of our cities who have the most face-to-face contacts with citizens, and it is the officers who implement constitutional policing."

To achieve such buy-in, police leaders must acknowledge that in many cases, it was their departments' policies, training, and internal messaging that have led to the challenges officers on the street are now facing. Taking responsibility in this way lets officers know that their leaders do not fault them for the sometimes fractured relationship between the police and the communities they serve, and that the department will work with them to establish new practices and rebuild relationships of trust with the community.

As COPS Office Director Ronald L. Davis noted, "Police officers do what their chief tells them to do. They go where you want them to go, and they engage in activities that you value." Therefore, chiefs must acknowledge their roles and commit to an organizational culture that values community policing and the protection of constitutional rights.

In leading this transformation, chiefs' behaviors within the agency serve as a model and guide for the rest of their organizations. If a police chief treats his or her officers with respect, solicits their views, and acts on their concerns, the officers will be more satisfied in their work life and will be more likely to model the chief's behavior, treating community members with respect and fostering perceptions that the police are legitimate.

4. "Fair and Impartial Policing" training teaches officers how to recognize and reduce the effects of "implicit bias"—racial discrimination or other bias that can occur below the level of conscious awareness, even among well-meaning people who reject biases and prejudice at the conscious level.

# Racial Issues and Constitutional Policing

"I am struggling with the positive ideas that I'm hearing around this room about constitutional policing, compared with what I've witnessed for the last few months. I've been in Ferguson, in New York, in Seattle, in Albuquerque, and there is a disconnect between what I'm hearing today and what I'm seeing in these cities, what I'm seeing on Facebook, and what's going on across the United States and how people are reacting. "

—Retired Madison (Wisconsin) Police Chief Noble Wray

### The "racial gap" in perceptions of the police

If the goal before law enforcement agencies is to provide constitutional policing and strengthen their legitimacy within the community, the first step is to understand why many community members have raised concerns about some of their policies and practices.

At the heart of this issue are questions of race relations.

As retired Madison (Wisconsin) Police Chief Noble Wray noted, there is a disconnect between the work that police departments have put into engaging with their communities in positive and productive ways and the perceptions that many community members have of the policing profession as a whole—perceptions that have been expressed in large-scale protests across the country in recent months.

These protests have centered on the experiences of minority communities and questions of disparate treatment, particularly with respect to the use of deadly force.

Perceptions of the police are sharply divided along racial lines. Indeed, race is one of the single greatest determining factors in how an individual perceives the police, with African Americans much more likely to express negative views of the police than Whites.[5] As one report notes, "Blacks are more likely to believe that the police generally treat Blacks more harshly than Whites and that police racism and prejudice against Blacks is common."[6]

A 2014 Pew Research Center poll underscores this profound difference. When asked if the events in Ferguson raised "important issues about race that need to be discussed," fully 80 percent of African-American respondents said "yes," in contrast to 37 percent of White respondents. Three-quarters of African-American respondents said that they had "little or no confidence in the investigations" into the shooting; only 33 percent of White respondents shared that view.[7]

This difference between Whites and African Americans regarding their opinions of the police and the justice system is persistent, regardless of how the questions are phrased. It is also a much wider gap than political scientists typically find regarding comparable questions, such as "gender gap" issues where men and women express different views.[8]

5. Ronald Weitzer and Steven A. Tuch, "Race and Perceptions of Police Misconduct," *Social Problems* 51, no. 3 (2004): 305–325, http://web.missouri.edu/~jlfm89/Race%20Perceptions%20of%20Police%20Misconduct.pdf.

6. Ronald Weitzer, "Racialized Policing: Residents' Perceptions in Three Neighborhoods," *Law and Society Review* 34, no. 1 (2000): 129–155, http://www.jstor.org//discover/10.2307/3115118?sid=21105665885763&uid=3739808&uid=4&uid=2&uid=3739256.

7. "Stark Racial Divisions in Reactions to Ferguson Police Shooting," Pew Research Center, last modified August 18, 2014, http://www.people-press.org/2014/08/18/stark-racial-divisions-in-reactions-to-ferguson-police-shooting/.

8. John Sides, "White People Believe the Justice System is Color Blind. Black People Really Don't," *Washington Post*, last modified July 22, 2013, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/22/white-people-believe-the-justice-system-is-color-blind-black-people-really-dont/.

The differences are believed to stem largely from the fact that African Americans, especially younger Black men, are more likely to report having been treated unfairly by the police, and are also more likely to have been incarcerated.[9]

"We know who we arrest for low-level crime. Look it up in the penitentiaries, look it up in our state jails: it's people of color."

—Dallas Police Chief David Brown

This particular experience of policing—and the criminal justice system as a whole—has a profound impact on the African American community and their perceptions of law enforcement. As New York City Police Department (NYPD) First Deputy Commissioner Ben Tucker described it, "When you live in these communities, you don't experience constitutional policing, you experience what you see, and the lens through which you see it is oppression."

### Racial issues within the police profession

Questions of race relations are just as pressing within the policing profession as they are between the police and the communities that they serve.

Recruitment of more minority officers is often cited as a strategy for increasing trust between the police and communities of color. However, conference participants noted that their efforts to identify, recruit, train, and hire officers from minority communities often yield disappointing results, and one reason for that is the very mistrust they are trying to ameliorate. Some African-American police officers have said that their friends and relatives did not understand or support their decision to join a police force, because they view the police as the enemy.

Furthermore, African-American police officers do not always feel welcomed to a police department, Kansas City (Missouri) Chief Darryl Forté said. "One of the reasons that Black people don't want to do our job is that Black officers say, 'Don't come. Look at how they treat us.' We're trying to change that."

New Haven Chief Esserman said he is well aware that African-American officers face additional challenges. "Just meet with a group of African-American officers and ask them what their life is like off-duty versus on-duty," he said. "And they'll tell you what it feels like to be humiliated when they're driving somewhere with their family and are stopped without reason, and then the cop who stopped them says, 'Oh, I didn't know you were a cop.' I know of hardly any African-American cop who hasn't experienced this. And often the White cops just refuse to believe it, to the point that African-American cops don't want to waste their breath in the locker room telling them their story."

In attempting to reconcile these issues, COPS Office Director Davis called upon police professionals to "seek first to understand, then to be understood" when interacting with members of minority groups, both in the community and within the police department.

"Realization is the first stage of reconciliation. It's the acknowledgement that maybe things didn't go the way we wanted them to go, and that there might have been collateral damage that we did not intend to cause, but that we accept responsibility for changing the way that we police in this country."

—COPS Office Director Ronald L. Davis

To rebuild relationships with communities, police need to carefully consider and implement initiatives that will facilitate honest conversations about race within the police department and with the public. Talking about race inside the department helps officers to become comfortable with a topic that has been largely avoided in the past, and to become more aware of the implications of race in the communities that they serve. Talking about race with the community demonstrates this awareness to the public, and reaffirms the agency's desire to forge positive and enduring relationships with community members.

9. "Criminal Justice Fact Sheet," NAACP, accessed July 20, 2015, http://www.naacp.org/pages/criminal-justice-fact-sheet.

# Police Shootings Versus Shootings by Criminal Offenders

The racial divide in perceptions of police was mirrored in one of the conversations about race that took place during the December 11 conference. In the wake of protests in Ferguson and other cites regarding incidents in which police used deadly force against African Americans, a number of people, including news commentators and police leaders, have asked why we have not seen protests about the thousands of African-American people who are killed every year by people *other than the police*.

Milwaukee (Wisconsin) Assistant Chief James Harpole noted that this issue flared up in November 2014 following a contentious meeting of the Milwaukee Fire and Police Commission concerning an officer-involved shooting. During the meeting, Police Chief Edward Flynn was observed using his cell phone.* After the meeting, a reporter asked Flynn whether it was "disrespectful" of him to be using his phone during the meeting. Flynn explained that during the meeting he had received news that a five-year-old girl in Milwaukee had been shot and killed as she sat on her grandfather's lap at his home and that he was using his cell phone to follow the developments in the killing of the little girl.

"Our chief didn't take kindly to that particular criticism, especially in light of *why* he was getting messages during the meeting—an innocent little girl getting killed," Assistant Chief Harpole said at the COPS Office/PERF conference. "And he told the reporter that the biggest racial disparity in Milwaukee is in who gets shot and killed. Eighty percent of our homicide victims are African American. It's the same with aggravated assault and nonfatal shootings. And the chief said that a lot of protesters know every detail of officer-involved shooting cases, but they can't name any of the victims of the everyday shootings in Milwaukee. We've had seven homicides this month already. Where is the outrage about that?"

COPS Office Director Ronald L. Davis took exception to the idea that shootings by police officers should be compared to shootings by criminals. "We shouldn't tell people how they should feel about crime, and judge how they feel about crime based on how they react to the *government* killing people. Thugs are thugs, and if they murder someone, we hold them accountable. But to equate that to a police officer—who is part of the government—killing somebody is a conflicting issue. It makes it look like you're basically saying that if you don't march against violence in your community, you have no right to march against the police for misconduct."

"Protesting doesn't stop street violence," noted Director Davis. "A thug is not going to feel pressured if I protest violence on the street. But protesting can have an effect on the government and on institutional racism."

First Deputy Commissioner Ben Tucker of the NYPD agreed that comparing homicides by criminals to police shootings "misses the point," adding, "I think we have this dichotomy, this split between community perceptions of the police and our outreach efforts, and it is something that we ought to pay close attention to."

For Assistant Chief Troy Finner of the Houston Police Department, this conversation resonated on a personal level. "A couple of years ago I lost a nephew to violence, and the way that a particular homicide investigator in my own department dealt with me wasn't a good feeling," he said. "We got past it, but I don't need anybody to tell me how I feel as an African American or how the community feels about Black-on-Black crime."

Assistant Chief Harpole noted that Chief Flynn agreed that officer-involved shootings and homicides by criminals are entirely different issues. Harpole said that a video of Flynn's exchange with the reporter went viral on social media. In the video, Flynn can be seen telling the reporter, "There's room for everybody to participate in fixing this police department, and I'm not pretending that we're without sin. But this community is at risk . . . because we've got large numbers of high-capacity firearms in the hands of remorseless criminals who don't care who they shoot."

Kansas City (Missouri) Police Chief Darryl Forté said it is good to air these issues involving race and policing, noting, "We can never be on cruise control because there are real issues out there. We need to talk about them."

* Sharif Durhams, "Milwaukee Police Chief Flynn's Take on Crime, Racial Disparities Goes Viral," *Milwaukee Journal Sentinel,* November 21, 2014, http://www.jsonline.com/blogs/news/283504501.html.

Because racial issues inside a police department can be sensitive, police leaders should make special efforts to ensure that internal discussions are handled professionally. One strategy is to begin discussions first with a small, diverse working group of department members and perhaps other experts, to define topics that can be used as starting points for wide-ranging discussions. A representative working group can also plan the formats for the larger discussions, in order to send the message that the department welcomes everyone's views and wishes to move forward with a productive sharing of perspectives and information.

"If we don't talk about these issues of race and policing, we're going to fail. When you have a group of individuals and they feel powerless about injustice and they don't have a voice, they do things that they normally wouldn't do."

—Houston Assistant Police Chief Troy Finner

It is incumbent upon police leaders to start these dialogues. If chiefs discount the role that race plays in community perceptions of the police, officers will take their cue and tend to have the same attitude.

"We talk about how we want our officers to police mindfully with our communities of color, but within our own organizations, we are afraid to have these conversations. We try to pretend that our human experiences aren't different, that 'we're all blue here.' But ignoring difficult issues like race isn't a good approach. As police chiefs, we have to remember that we're modeling behavior for our officers. They'll do what we're doing."

—Pittsburgh Police Chief Cameron McLay

Conference participants identified several strategies for proactively addressing race and policing that are discussed in this report:

- Begin open and honest dialogues about race within the policing profession.
- Engage in such open and honest conversations with the community as a whole.
- Modify police training in order to change departmental culture around race.
- Introduce Fair and Impartial Policing training.

# Strategies for Reinforcing Constitutional Policing

The task before police agencies in the post–Ferguson environment is to redouble their efforts to provide constitutional policing as well as policing strategies and policies that the community perceives as legitimate.

As participants at the 2014 COPS Office/PERF conference discussed, this is a multi-level process. It involves having open and honest conversations with the community, reexamining past practices, training officers in de-escalation techniques to prevent the need to use force, and responding to the diverse needs of community members. It also means examining new technologies, procedures, and practices to ensure that they reflect the needs and rights of the community and that they retain that community's consent.

"People will obey the law when they believe that the law is there to protect them and make their community better, not because they're afraid of getting in trouble."

—Salinas (California) Police Chief Kelly McMillin

### Improve training to change the police culture about race

In order to change police department culture regarding race relations, chiefs must change the training that contributes to that culture.

Police leaders at the conference said that in many departments, trainers and senior officers are reluctant to talk about racial issues in policing, and this resistance is passed on to new recruits, contributing to sometimes uneasy relationships between the police and the community.

As Chief Harold Medlock of the Fayetteville (North Carolina) Police Department explained, "I'm reminded of what Kevin Gilmartin[10] says, that police agencies spend a lot of money doing psychological background checks on people to make sure that we're hiring the most 'normal' people out there. Then we put them in a training academy and turn them completely abnormal. We change who they are through the academy process."

For Dallas Police Chief David Brown, changing the training culture meant replacing his entire police academy staff. Brown's goal was to rebuild the Dallas Police Department's culture from the ground up, and to capitalize on the openness to discussions about race that new recruits bring into the academy.

"The millennials that we're hiring don't have the same types of biases that the older generation sometimes has," Chief Brown said. "They're much more likely to absorb this. Our twenty-somethings will accept these types of discussions and concepts. So it's a great time for leaders to start bending the curve in our culture by having these conversations."

#### Fair and Impartial Policing training

"Fair and Impartial Policing" is among the new training initiatives on race that police departments have introduced. The training is based on research by social psychologists that has shown that implicit or unconscious bias can impact what people perceive and do, even among people who consciously hold nonprejudiced attitudes. Dr. Lorie Fridell of the University of South Florida, who has developed a Fair and Impartial Policing training program, has said that in the past, training programs for police regarding racial bias have simply conveyed the message, "Stop being prejudiced."

10. Kevin Gilmartin, *Emotional Survival for Law Enforcement: A Guide for Officers and Their Families* (Tucson: E-S Press, 2002).

But this message is not suited for police officers who do not have explicit prejudices. In fact, this message can offend the officers and produce a backlash, because they do not believe they are racially biased.[11]

In contrast, in Fair and Impartial Policing training programs, the emphasis is on the idea that even officers who do not think of themselves as prejudiced may exhibit unconscious bias. For example, as Dr. Fridell described, in the case of a traffic accident where there is a dispute about who was at fault, even an officer *who considers himself unprejudiced* might unconsciously give slightly greater credence to a White man in an expensive car than to an African-American man in an older vehicle. Officers are more receptive to this message about unconscious bias, according to Dr. Fridell, because "there is no finger-pointing, no blaming, just a discussion of how our minds work and what we all need to do to reduce and manage our human biases."[12]

Retired Palo Alto Police Lieutenant Sandra Brown, who teaches Fair and Impartial Policing in police departments throughout North America, said that the training has many implications for the everyday work that police officers do. It can help them to de-escalate potentially volatile situations and enable them to better empathize with the communities they police. Officers who recognize and can override their implicit biases are better able to deal with community members as individuals and avoid stereotyping.

Implicit bias must be understood in the context of the historical relationship between the police and communities, Lieutenant Brown said. "Police officers carry the burden of everything that has happened in the profession in the past," she said. "Most police officers working today were not born during the 40s, 50s, or 60s. Many officers were infants when the Rodney King incident occurred in 1991. But they still carry the burden of those memories among people who lived through those incidents and remember them. An integral part of building police legitimacy is understanding that this burden exists and learning to deal with it in a way that has a lasting, positive impact on community relations."

"These important conversations concerning bias and policing need to happen with the line-level officers," Lieutenant Brown said. "Understanding implicit bias is the first step to helping officers build trust with the communities they serve. This is done by not only showing respect and dignity for the members of their communities, but also having empathy for people they come in contact with in respect to their individual experiences."

## Recommendations: Changing police culture about race

- Strive to engage officers and community members in dialogues about race and its impact. These conversations can be sensitive, so enter into them in a careful, inclusive, well-planned approach and not haphazardly.
- Within departments, Fair and Impartial Policing Training is one way to start this conversation and equip officers with knowledge about implicit bias and the skills to mitigate its impact. The Fayetteville (North Carolina) Police Department, St. Louis (Missouri) Metropolitan Police Department, Kalamazoo (Michigan) Police Department, and many others have introduced Fair and Impartial Policing training.
- Within the larger community, law enforcement agencies should be open to discussing race in their interactions with community members and acknowledging its importance in conversations about policing and the criminal justice system.

11. Lorie Fridell, "Psychological Research Has Changed How We Approach the Issue of Biased Policing," *Subject to Debate* 28, no. 3 (May–June, 2014): 4–5, http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2014/debate_2014_mayjun.pdf.

12. Ibid.

# A Case Study in Kalamazoo, Michigan: Gather Data on Race, Identify Problems, and Share the Results with the Public

Kalamazoo Police Chief Jeff Hadley described his experience in identifying and addressing racial disparities in traffic stops:

"An integral part of building trust between the police and the community is transparency, and the need for transparency takes on a particular importance when addressing questions about race.

"When I arrived in Kalamazoo as the police chief in 2008, the community wanted to know whether or not the department racially profiled. I thought it was a fair question, so I began a process that would answer that question in a reasonable and responsible way.

"We brought in an outside consulting organization, Lamberth Consulting, that had credibility in the industry. Their methodology is thorough and is respected by federal courts.

"When we began, we didn't even have the necessary system in place to collect the data we needed to properly analyze this question. So we first had to build the necessary internal infrastructure, and then collect the data we needed.

"After we had collected data for a full year, our consultant analyzed the data and found a significant disparate impact in our interactions with African Americans. This was found in both our traffic stop data and in our post-stop activity data, including consent searches.*

"We had kept the community informed throughout this process, and we had promised to tell them the truth when we had results. We told them that if the data showed we had issues to deal with, we would deal with them in a forthright and responsible manner.

"Everyone in the community was waiting on the results, but before it came out publicly, we wanted to share the findings with our officers and key individual community leaders. You don't want to release something like that publicly without letting your troops know first.

"The discussion with our officers was an extremely difficult conversation to have. The officers had a tough time taking the bad news, but we reiterated that the first step to dealing with this was coming out and telling the truth.

"The community handled the information very well. There were two things we heard in response. One: You're not telling me anything I don't already know. Two: How can we help? That reaction was a tremendous relief, because we felt that we could move on with making necessary changes.

"One of our key changes was to issue a consent-to-search policy that states that all officers are required to document every search they conduct and their probable cause for doing so. We also established a system to ensure that our interactions with the community build positive relationships between officers and members of the community. This change has generally been well-received by officers. There are always some who resist change, but what we're really doing here is making our department more legitimate."

* "Traffic Stop Data Analysis Project: The City of Kalamazoo Department of Public Safety" (Kalamazoo, Michigan: City of Kalamazoo, September 2013). http://media.mlive.com/kzgazette_impact/other/KDPS%20Racial%20Profiling%20Study.pdf.

## Recommendations: How to Address and Correct Past Missteps

- Be honest with the community about past missteps and the strategies that have been implemented to address them.
- Communicate publicly on how and why the police are handling a certain situation. Keeping the community informed and updated reduces the potential for misunderstandings and enhances public trust.

### Constitutional crime-reduction strategies

"When you look at the level of anger in some of our communities as a result of these cases in New York and Ferguson and around the country, we have to ask ourselves, 'Have our tactics alienated our community? Can our methods be interpreted as oppressive?' We've experienced a lot of success in terms of reducing crime, but at what cost?"

—Camden (New Jersey) Police Chief Scott Thomson

Police agencies nationwide have produced remarkable successes in crime reduction over the last two decades. The national violent crime rate in 2013 was 367.9 crimes per 100,000 population, which is approximately half 1994's rate of 713.6 per 100,000.[13]

However, police in many communities today are grappling with the unintended consequences of certain policing strategies that focused on improving metrics such as crime rates, but may have given too little attention to how the communities felt about the police strategies.

Much of the discussion on December 11 centered on this reexamination of past practices and how to modify them and implement new strategies to build police legitimacy.

"It's the order in which you do these things. Legitimacy is a big component that you have to address before you use traditional policing measures."

—Dallas Police Chief David Brown

Participants at the COPS Office/PERF conference said that crime reduction strategies cannot be measured solely according to whether they achieve their goal of reducing crime rates; they must also be judged according to whether they are generally considered legitimate in the communities where they are implemented.

Having relationship capital means that the public is more likely to perceive law enforcement activities as legitimate and assist the police with information about crime in their neighborhoods. It also means that if mistakes are made, the community is more likely to see them as an aberration and trust that the police will correct them.

For example, when Dallas Chief Brown was formulating a strategy to address the open-air drug sales that had long dominated a Dallas intersection, he first focused his attention on building relationships of trust between members of the community and his department. This included devoting attention to youth programs in the area, such as the police athletic league and the police junior academy. The Police Department did not stop policing in the affected community, but they did not launch a major drug enforcement effort until Brown was confident in the strength of the department's relationship with community members and the community's belief in the legitimacy of the department. As a result, when Brown did begin a large-scale narcotics enforcement effort in the area, it was received positively.

13. "Crime in the United States by Volume and Rate per 100,000 Inhabitants, 1994–2013," Federal Bureau of Investigation, accessed July 21, 2015, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/1tabledatadecoverviewpdf/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1994-2013.xls.

# Involving the Community in Determining Police Strategies

Police agencies also are involving the public in evaluating crime-fighting practices. The best way to identify the needs and concerns of community members is to simply ask them what they want from the police.

In New Orleans, the police department has adopted such a strategy. Deputy Police Superintendent Robert Bardy said the goal is "not to take traditional policing and police the community the way *we* think the community wants to be policed. We have to listen to the community and see what *they* want, the issues that are important to each community."

In line with this approach and as part of the department's negotiated settlement with the DOJ following a civil rights investigation, the New Orleans Police Department has begun inviting community members involved in minor offenses to engage in open dialogues with officers, in lieu of criminal prosecutions or pretrial diversion programs. This encourages the development of mutual understanding between the police and the public and lays the groundwork for positive relationships.

### Terry stops and the metrics of policing

We can talk about homicides being down 33 percent, but people don't care about that if they don't think that the police are being fair.

—Kansas City (Missouri) Police Chief Darryl Forté

"Stop-and-frisk" or "stop-question-and frisk" are among the more controversial policing strategies that have implications for constitutionality, legitimacy, and issues of racial bias. Participants at the COPS Office/PERF conference discussed whether stop-and-frisk practices in some police departments have focused too much on metrics, such as "number of stops made." Also discussed was whether these practices damage police relationships with communities, especially minority communities.

**The limits of *Terry* v. *Ohio* (the "stop-and-frisk" decision)**

The 1968 Supreme Court decision in *Terry* v. *Ohio* provides the legal justification for stop-and-frisk practices in policing. As a result, these stops are often called "Terry stops." The *Terry* decision established the constitutionality of stopping and frisking a person on the street based on a reasonable suspicion of criminal behavior.

The case involved the stop of a man who appeared to be "casing" a store in Cleveland, Ohio, with two other men. The suspects were repeatedly walking up and down the same block, stopping to stare through a particular store window before repeatedly conferring with each other on the street. In the *Terry* decision, the Supreme Court evaluated the detailed facts about that suspicious behavior before deciding that the stop-and-frisk of John W. Terry did not violate the Fourth Amendment ban on unreasonable searches and seizures. (Terry and one of the other men were found to be carrying handguns and were charged with carrying concealed weapons.)

Specifically, the court decided:

> [W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where, in the course of investigating this behavior, he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.[14]

14. *John W. Terry* v. *State of Ohio*, 392 U.S. 1 (1968), at 30.

## Recommendations: Achieving community support for law enforcement strategies

- Emphasize the importance of high-quality service to the community. Do not focus solely on "process" numbers, such as numbers of traffic or pedestrian stops or arrests.
- Build relationships and foster legitimacy within the community before launching a major new law enforcement strategy. For example, the Dallas Police Department concentrated on building strong relationships with a community before implementing a large-scale narcotics enforcement operation.
- Ask the community what their needs and concerns are, and use their feedback to determine law enforcement priorities.

In the view of Dr. Nancy La Vigne of the Urban Institute, much of the controversy regarding stop-and-frisk practices stems from police departments that have applied it programmatically rather than as a response to individual situations in which officers reasonably believe that there may be danger.

By contrast, stop-and-frisk practices in some police departments appear to some commentators to be carried out programmatically and intensively in high-crime marginalized communities to deter gun carrying or to generally send a message that the police are closely monitoring what is happening in the neighborhood. Dr. La Vigne said that police agencies should train officers that the acts of "stop, question, and frisk" each have their own legal preconditions.

Combining them into a single intervention and targeting them in specific high-crime communities may run counter to the legal precedents associated with *Terry* v. *Ohio* and related case law. It is also critical, Dr. La Vigne said, that police agencies collect and analyze data regarding stops their officers conduct to identify actions that may be unconstitutional as well as a means of holding officers accountable.

If the data show that stops and frisks only rarely result in seizures of weapons, for example, that can be seen as an indication that the stops and frisks were not in fact based on a reasonable suspicion that the persons stopped might be armed and dangerous, as required by the Terry decision. Suspicions that people on the street are concealing weapons may not be "reasonable" if they almost always turn out to be incorrect.[15]

And if the data show that members of minority groups are stopped and frisked disproportionately, that is another indication that police need to carefully consider whether the stops are meeting standards of legitimacy as well as the legal standards of constitutionality.

In New York City, this racial component was a factor in a federal lower court's ruling that the city's stop-and-frisk practices were unconstitutional, on equal protection grounds. The judge said the practices resulted in a "policy of indirect racial profiling."[16]

Dr. La Vigne called for police to share data about their stops and frisks with the public, and to engage the community in a dialogue about these police practices.

15. See, for example, *Floyd et al.* v. *The City of New York,* 959 F. Supp. 2d 540, at 6, "[In] 98.5% of the 2.3 million frisks [conducted by the NYPD between January 2004 and June 2012], no weapon was found." http://www.nylj.com/nylawyer/adgifs/decisions/scheindlin_floyd.pdf.

16. In this case, the Second Circuit remanded back to the District Court for another ruling at the federal district court level, but then the city of New York decided to drop its appeal. Joseph Goldstein, "Judge Rejects New York's Stop-and-Frisk Policy," *New York Times*, last modified August 12, 2013, http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html?hp&_r=1&.

NYPD First Deputy Commissioner Tucker and New Haven Chief Esserman called for more comprehensive training of officers in the *Terry* decision itself, so they will have a complete understanding of its nuances and the reasoning behind it.

**Racial disparities found in Terry stops**

A large part of the conversation about stop-and-frisk centers on race. If stop-and-frisk is seen as a "program" to deter crime, rather than as an action to take in a particular situation with a particular criminal suspect, it will most likely be used disproportionately against minorities, who may comprise a larger part of the community in high-crime, impoverished neighborhoods. And in neighborhoods with diverse ethnicities and demographics, implicit bias may affect an officer's decisions about whom to stop-and-frisk.

"We know that the decision to stop someone based on what we see as suspicious behavior is racially tinged," said Deputy Commissioner Tucker. "Once stopped, is that person frisked and searched? We know from the data that's been drawn from across the country that that decision is also racially disparate. We see disparate treatment in use-of-force situations as well. Across the spectrum, the differences are stark. Among those who are arrested or sanctioned, which race gets the harshest treatment? In our case, when we looked at New York, those decisions were racially disparate."

A number of participants at the December 11 conference said that overly aggressive stop-and-frisk practices alienate the community if innocent persons are repeatedly stopped and frisked on the street.

Columbia Law School Professor Jeffrey Fagan also said that these practices are not necessary to achieve crime reductions. He noted that since April 2012, New York City has experienced a simultaneous decrease in the number of stops that the police conduct and a reduction in homicide and gun violence rates.

"I think that in some departments, there is no cost right now for an officer to just make as many stops as possible in order to do searches and cast a really wide net to find illegal guns," he said. "There should be stronger rewards for officers who get it right and make these stops in a way that is respectful and constitutionally sound."

Kalamazoo, Michigan, also has seen parallel decreases in traffic stops and crime rates in the wake of policy changes stemming from the 2013 study of racial data that Police Chief Jeff Hadley commissioned. (As mentioned above, the study found that African-American drivers were pulled over at twice the rate of White drivers in Kalamazoo. African Americans were also more likely to be searched and arrested, even though they were issued fewer citations than White drivers.)

In response to the finding of racial disparities, the Kalamazoo Police Department contracted with Dr. Fridell to teach a three-week course on fair and impartial policing, and the department also developed a more rigorous consent-to-search policy to protect citizens' rights. Though some officers feared that these changes would result in increased crime rates, the opposite has occurred. "Traffic stops went down 42 percent, Part I crimes are down 7 percent, and our arrests are down 20 percent," Chief Hadley said.

## Zero tolerance and hot spot policing

Hot spot policing is a strategy that focuses police enforcement efforts on the particular locations where crime occurs; e.g., a nightclub where fights break out every weekend or a street corner known as an open-air drug market. By focusing police resources on the "hot spots" that generate large numbers of calls to the police or where crimes are often committed, police can be more effective in deterring and preventing crime, rather than merely investigating crimes after they are committed.[17]

However, hot spot policing has implications for legitimacy and issues of racial bias because the hot spots of crime often are found in poor neighborhoods and areas with significant minority populations.

17. "Hot Spot Policing Can Reduce Crime," National Institute of Justice, accessed July 20, 2015, http://www.nij.gov/topics/law-enforcement/strategies/hot-spot-policing/Pages/welcome.aspx. See also, Carolyn Johnson, "Breakthrough on 'Broken Windows,'" *Boston Globe*, last modified February 8, 2009, http://www.dcvb-nc.com/cr/Broken_Windows-%20Lowell02-08-09.pdf.

"Many agencies engage in what we call hot spot policing," said Dr. La Vigne. "My question is, how does that feel for community members? Does the greater police presence from hot spot policing feel like intensive stop-and-frisk?"

A related concept is the "broken windows" theory, which is based on the idea that minor indicators of disorder in a neighborhood—such as broken windows, graffiti, and offenses such as subway turnstile jumping—can lead to more serious crime because the low-level disorder sends a message to potential criminal offenders that the residents and the police don't care about crime. If the police address low-level criminal activity and these quality-of-life issues, however, they can help prevent more serious crime and build stronger relationships with the community.[18]

However, in many communities the feeling of a heavy police presence can be exacerbated by zero tolerance policing, which can be seen as an exaggeration or misinterpretation of broken windows policing. Though it defies easy definition, zero tolerance is generally recognized as an approach to crime control that combines a "tough-on-crime" stance with *nondiscretionary* law enforcement.[19] If officers are not allowed to use their discretion sensibly, they can end up cracking down on minor offenses by generally law-abiding members of the community while serious offenders may evade the police.

In the experience of Chief Cathy Lanier of the Metropolitan Police Department of the District of Columbia, using a zero-tolerance approach in the District of Columbia alienates community members in high-crime neighborhoods and delegitimizes the police in their eyes. As a result, the residents are less likely to cooperate with the police.

"I'll give you a perfect example of hot spot and zero tolerance policing that we were doing," Chief Lanier said. "We'd send all of these cops down to high-crime areas during the afternoon after roll call. The first officer would lock up a guy who runs a stop sign and whose permits were expired by 30 days. Then another officer would see a 55-year-old woman on her front porch with a beer in her hand step off of her porch to talk to a neighbor. He'd lock her up for drinking in public." By the time it was dark out, Lanier explained, the officers were back at the station processing these low-level arrests. "And guess what happens in the neighborhood where they just were: carjackings, home invasions, armed robberies."

What is important to remember, Chief Lanier said, is that hot spot neighborhoods are not only home to the most crime but also to the most victims and witnesses. Therefore, police must be responsive to the concerns that residents express, whether they are about serious crimes in their neighborhood or less serious quality of life issues, such as abandoned cars. Hot spot policing and broken windows policing fit with this neighborhood, community-oriented approach. Officer discretion also is critically important, to ensure that police actions are perceived as legitimate and having common sense.

Our past approaches to policing didn't decrease the gap between us and the community. Increasing arrests for mostly nonviolent offenses didn't necessarily make our communities safer, but it has filled our jails with young Black men.

As other chiefs have observed, the medical profession is cognizant of side effects; doctors don't prescribe medication if the side effects of a drug outweigh the benefits. I am not sure that the policing profession considers the side effects of some of our crime reduction strategies.

A good doctor will also work with the patient, and try to engage the patient in the therapy. Perhaps we will get a better outcome if we consult with our communities as we consider various crime-fighting strategies, rather than making these decisions unilaterally.

—South Bend (Indiana) Police Chief Ron Teachman

18. George L. Kelling and James Q. Wilson, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic*, March 1, 1982, http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/.

19. Jayne Marshall, "Zero Tolerance Policing," South Australian Office of Crime Statistics & Research Information Bulletin no. 9 (1999), http://www.ocsar.sa.gov.au/docs/information_bulletins/IB9.pdf.

### Police culture: The numbers of policing

Hot spot policing and other crime-fighting strategies are often part of a "culture of data" in police departments, in which individual and department-wide successes are measured in terms of the number of stops conducted, gun recoveries made, arrests made, and other numerical indicators.

Participants at the COPS Office/PERF conference noted that focusing on statistics is not necessarily bad; major reductions in crime over the last generation have been attributed largely to the advent of CompStat policing and other data-driven approaches.

However, there is a new emphasis on widening the range of data elements that are analyzed in policing. Using data in ways that reinforce legitimacy can have a lasting impact on police departments' relationships with their communities.

In Oakland, California, for example, the police department not only counts the numbers of stops and searches that are made, but also the number of searches that result in the seizure of a gun, and the numbers of complaints made. These numbers are tracked for the department's squads and are compared against each other. Some squads have high rates of gun recoveries, while others have lower rates. Low recovery rates may be an indication that too many searches are being conducted, or in some cases it may be the result of other factors, but the important point is that these issues are being analyzed in order to maintain community support.

In addition to reviewing the numbers and, when necessary, changing the practices that contribute to numbers that cause concern, the Oakland Police Department is recognizing the squads that appear to be doing everything right. "Tomorrow we have an award ceremony where we will recognize a squad that has been extremely effective," said Chief Sean Whent. "They have a very, very high recovery rate in their searches, a very low complaint rate, and are phenomenal all around."

Recognizing and rewarding strategies and tactics that contribute to legitimacy as well as to crime reduction send a message to officers that legitimacy and community support are important in policing, and are taken seriously by the department. Officers learn that making large numbers of stops is no longer the path to promotion in the department, if the stops are not productive.

"I think we need to hit the reset button on the tactics that we are using in policing our communities," said Washington (D.C.) Chief Lanier. "The best cops know how to develop sources, and they get the most illegal guns and dangerous offenders off of the streets." And developing sources of information in neighborhoods is about building relationships with community members, not making the most stops. If communities trust in the police and believe that police activities are legitimate, they are more likely to provide information.

## Recommendations: Rethinking statistics

- Teach "stop, question, and frisk" as a legal standard for making an individual stop, not as a crime-fighting program that results in hundreds or thousands of stops.
- Include a detailed overview of the *Terry* v. *Ohio* decision in academy training, so recruits will understand the narrow set of factual circumstances that led to it.
- Reward officers who "get it right" (for example, those with low complaint rates and high rates of recovering weapons).
- Gather a wider range of data that measure whether crime-reduction strategies are supported in the community and are effective.
- Focus on community engagement and ensure that crime-reduction strategies are not being employed counterproductively in ways that alienate the community.

## Use of force and de-escalation training

In Boston, we don't train our recruits to be a military force. I want my officers to come out as problem-solvers, not an occupying force.

—Boston Police Commissioner William Evans

The year 2014 was marked by large-scale demonstrations and protests across the United States over police uses of force in Ferguson, Missouri; Staten Island, New York; Cleveland; and other cities. These incidents have raised questions among many community members about the legitimacy of those police actions as well as the nature of the training officers receive.

Traditionally, police officers have been trained more as "soldiers" than as "servants" of a community. Noted Kansas City (Kansas) Chief Terry Zeigler, "For a long time, the police academy has been based on a military boot camp type of philosophy. That is missing the point. Policing is mostly about manners and courtesy.

'Warrior' messages are only good when you're talking about incidents like active shooter situations where officer survival is paramount."

"The warrior mentality is a cultural issue within police departments," said Camden County Chief Thomson. "It's a question of the 'crime-fighter' versus the 'community-builder' mentality. We need to have a cultural shift in policing to the latter to regain the trust and legitimacy that has been recently lost."

The Houston Police Department recognizes officers who successfully ratchet down tensions in a volatile situation. "De-escalation needs to be a part of departmental culture and needs to be rewarded," said Assistant Chief Troy Finner. "If we hear about an officer de-escalating a situation that could have become dangerous if the officer had handled it differently, we need to acknowledge that." The Houston Police Department encourages supervisors and captains to issue commendations for officers who successfully de-escalate situations, reinforcing the idea that officers should have "guardian" skills as well as "warrior" skills. Knowing which techniques are best in a particular situation reflects the "highest level of professionalism," said Finner.

Dr. Bryan Vila of the Washington State University–Spokane has developed an innovative program that trains officers to be more adept at social interactions in tactical situations. Tactical Social Interaction (TSI) training was developed in concert with Washington's Criminal Justice Training Center as the curriculum for the Defense Advanced Research Projects Agency's Strategic Social Interaction Modules program.

TSI focuses on developing interpersonal skills that are critical for de-escalating situations that might otherwise end in the use of force. "Those same skills are critical for improving procedural justice because they improve officers' ability to connect with people and gain their cooperation," said Dr. Vila.[20]

"The problem is that a lot of younger cops haven't fully developed the social skills that enable them to get along with people, to connect, and to maintain a good interaction in tactical encounters. Nor do they know how to repair interactions when things start to go bad, or how to close an interaction successfully," Dr. Vila said.

The TSI training program was designed, said Dr. Vila, "with advice from a large group of internationally recognized experts to help police officers and military personnel learn the interpersonal skills that they often lack." TSI consists of a four-day training program based on best practices in adult learning. During the training, participants are broken into small groups, each with a facilitator, and run through a series of increasingly challenging tasks that develop their ability to read non-verbal cues, accurately assess developing situations, successfully engage with people whose cultures and languages may be unfamiliar to them, and redirect interactions when they begin to go badly.

20. TSI training, Dr. Vila said, is now in the final stages of refinement and validation. It also is being reviewed for adoption by the Federal Law Enforcement Training Center and the U.S. Air Force Academy.

Before beginning the TSI training program, participants' baseline performance is assessed using a series of realistic scenarios presented in a high-fidelity deadly force training simulator. After training, they complete a second set of scenarios to assess changes in their performance. In the TSI pilot study, there was a statistically significant improvement in the participants' performance after having gone through the training.

## Recommendations: Use of force and de-escalation training

- Include discussion of the "guardian" mentality as well as the "warrior" mentality when training recruits. Each has its place, depending on the nature of the situation being handled by an officer.
- Build a police culture that values de-escalation skills by rewarding the officers who demonstrate those skills in the field.
- Use scenario-based training that includes de-escalation strategies. Dr. Bryan Vila of the Washington State University–Spokane has developed a training program that helps officers rapidly develop interpersonal skills critical for de-escalating situations that might otherwise end in the use of force.

### Involve the community in the training process

Changing departmental culture to build legitimacy with the community often means changing officer training. A number of police departments, including those in Boston, New York City, and Oakland, have launched unique programs in which community groups are invited to make presentations in officer-training sessions. Thus, community interaction becomes a central feature of recruit training.

Bringing the community into the academy serves four key purposes. First, it establishes the importance of relationship-building in policing. Second, it equips new officers with the skills needed to make those connections. Third, it provides community members and new officers a chance to get to know one other, creating a foundation on which they can build lasting relationships. Fourth, it gives the community an opportunity to become personally invested in the police and their success, and it gives the police a chance to become invested in the community and its concerns.

"You could almost say that our academy used to be about preparing people for war," said Oakland Chief Whent. "It's a lot different than it used to be. Now we stress community interaction." Community groups are invited into the academy to speak with trainees. Representatives from more than 10 groups, including the LGBT community, the faith community, and immigrant-rights groups, are each given one- to two-hour blocks of time on the training calendar. Recently, an academy class had a lunch with members of the local Men of Valor program, which offers re-entry assistance to offenders who have been incarcerated. The goal, explained Whent, was to give these men and police trainees a chance to engage with one other and "see each other as real people."

Boston has taken a similar approach. As Boston Police Commissioner William Evans explained, "We don't train our recruits to be a military force. Our academy is not about producing an 'us versus society' mentality." Instead, the department invites representatives of the NAACP, Mothers for Justice and Equality, and other groups to address the trainees for two to four hours each.

The Boston Police Department also requires its recruits to complete community service work while they are in the academy. "For up to a week," said Commissioner Evans, "their job is to go out, to meet with merchants, to meet with residents, and get to know the community."

Evans said that the next class will also bring in young people from Boston to share their issues and concerns. "It's about making sure that these academy recruits come out knowing their community," he said. Reaching out to young people has been central to Commissioner Evans's goals for the department. "One of the first things that I did was beef up the school police," he said. "I wanted to send the message that 'Hey, the police are not bad guys, we are not the enemy, and we are going to work harder now to connect with you.' "

The New York City Police Department recently piloted an initiative similar to the ones in Boston and Oakland. New officers were paired with senior training officers and "community partners," citizen volunteers who help the officers get to know their assigned precincts. According to NYPD Deputy Commissioner Tucker, the program was so successful that it is now a part of the department's regular field training.

### Examples of police strategies that engage the community

Conference participants also discussed ways of reorganizing police departments in ways that support relationship-building between officers and the public.

One such strategy is to assign officers to permanent, geographically determined beats. This gives them an opportunity to develop relationships with community members and become knowledgeable about local issues and concerns.

**A Return to Beat Policing:** Fayetteville Chief Medlock took this approach after joining the department in 2012. The Fayetteville police had experienced racial tensions and breakdowns in communication between the department and the community. Chief Medlock reassigned officers to geographic beats and appointed nine sector lieutenants with responsibility for crime and quality-of-life concerns in their areas of the city. "Then we became very active in meeting with community members and actually talking to the people who had issues with the department," Medlock said. "Over the last 22 months since I've been chief, we've built a lot of relationships and new friendships."

**Mentoring New Officers:** New York City Police Commissioner William Bratton announced plans for a major reorganization in officer assignments in January 2014–his first month in office. Previously, first assignments for new recruits often were in high-crime "Impact Zone" neighborhoods. Bratton announced that he would switch to a system in which new officers are placed in local precincts and paired with experienced officers who can mentor them.[21]

Commissioner Bratton named First Deputy Commissioner Ben Tucker to be in charge of this reorganization. At the COPS Office/PERF meeting, Tucker explained that the goal is to give new recruits experience in the entire range of policing activities, including community policing opportunities that involve getting to know a community and building relationships. This is a reversal from the previous practice of assigning rookies to high-crime, unfamiliar territory and instructing them to "get numbers." The new approach not only is safer for the officers, but it's also is better for community/police relationships. The high-crime areas are now policed by more seasoned officers who know the neighborhoods and will not inadvertently alienate law-abiding residents in their efforts to reduce crime.

**Getting Officers Out of their Cars:** One of the most comprehensive reorganizations in a police department occurred in Camden, New Jersey. The city's police department was disbanded in 2013 and replaced with a new Camden County Police Department. Camden is one of the poorest cities in the nation, and its police department experienced high levels of mistrust among its community members as a result of the police being perceived as apathetic, lethargic, and in some instances, corrupt, according to Chief Thomson.

In January 2013, the city agreed to pay $3.5 million in damages to 88 persons whose convictions were overturned because of the corruption in the department.[22]

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21. J. David Goodman, "Bratton Says Rookies' Role in Anticrime Effort Will End," *New York Times,* last modified January 31, 2014, http://www.nytimes.com/2014/02/01/nyregion/bratton-tells-chiefs-hell-stop-sending-rookies-to-high-crime-areas.html.

22. See, for example, Joseph A. Gambardello,"Former Camden Officer Gets 46 Months in Corruption Probe," *Philadelphia Inquirer,* last modified February 2, 2013, http://articles.philly.com/2013-02-02/news/36686554_1_camden-police-officer-jason-stetser-subsequent-corruption-charges; "Camden Agrees to Pay $3.5M to Victims of Police Corruption" press statement, American Civil Liberties Union, last modified January 10, 2013, https://www.aclu.org/criminal-law-reform/camden-agrees-pay-35m-victims-police-corruption.

## Recommendations: Bringing the community into the police academy

Invite community members and community groups into the police academy to teach new recruits about the communities that they will be policing, and to give the community members the opportunity to learn about the new recruits. This builds a departmental culture that prioritizes community engagement.

- The Oakland Police Department invites representatives from more than 10 groups, including the LGBT community, the faith community, and immigrant rights groups, to teach in their academy in one- to two-hour blocks.
- The Boston Police Department invites representatives from the NAACP, Mothers for Justice and Equality, and other groups to address recruits for two to four hours each. Boston also requires that recruits complete community service work as part of their academy training.
- In New York, the NYPD partners new officers with community partners who can serve as ambassadors and introduce them to the neighborhood.

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With initial funding from the state of New Jersey, Camden County launched a new police department on May 1, 2013, headed by Chief Thomson. At the COPS Office/PERF conference, Thomson said he saw this development as an opportunity to build a new police culture focused on repairing relationships with the community. One of the challenges he faced was the fact that the new department's officers were being hired from police departments across New Jersey; the pool of potential recruits itself was disproportionately White. This made many residents of Camden, which is a 96 percent minority community, uneasy, Thomson said. "There was a legitimate historical fear that all of these White officers were going to have 'itchy trigger fingers,'" he said. "There were concerns of potential shootings and excessive uses of force."

Chief Thomson said he knew that the solution lay in community policing—specifically, in finding ways for the new officers and community members to get to know each other, face to face. "Race and ethnic education is experiential," he said. "We're not going to teach it in classrooms. So we took the squad cars away. We loaded cops into paddy wagons and dropped them off in the community. If you're on foot and not in a car, you are much more likely to talk to people and start making connections. In very short order, the race of the officers became less significant, because there was a tremendous amount of interaction between the residents and the officers."

This was crucial, Chief Thomson explained, not only for new officers but also for a number of veteran officers who had grown cynical. "It was a reminder to the older officers of what policing is really about. For the younger officers, it was the greatest education in the world. And for the community, there is no greater example of us caring about them than genuine human contact and by doing more listening than talking on the city streets."

## Recommendations: Engaging the Community on the Streets

- Assign officers and supervisors to specific neighborhood beats and make them the primary point of contact for those neighborhoods.
- Assign officers to foot patrols, which are more conducive to engaging in personal interactions and fostering positive community relationships than patrolling in cars.
- Partner new officers with senior officers to provide opportunities for mentorship and teaching recruits how to productively interact with community members. (The New York City Police Department pairs its new officers with senior training officers and "community partners," citizen volunteers who help the officers get to know their assigned precincts.)

### Avoiding use of force with people with a mental illness

An average police officer will deal with calls involving persons with a mental illness several times a week.

—Montgomery County (Maryland) Police Chief Thomas Manger

Any discussion of constitutional policing and legitimacy in policing must include consideration of police encounters with persons who have a mental illness or mental disability. This is an emerging priority for federal investigations of local police agencies for constitutional violations.[23]

As Chief Thomas Manger noted, these types of calls happen many times a day in police departments across the country. Police chiefs and sheriffs who manage jails sometimes note that unfortunately, they operate the largest residential facilities for persons with a mental illness in their jurisdiction. Failures in mental health treatment systems often result in persons with a disability or a mental illness becoming entangled in the criminal justice system.

Encounters on the street involving persons with mental illness can be challenging even to officers who are experienced and have received specialized training to recognize and understand the symptoms of these conditions. A trained officer will realize that a person with a mental illness or other condition may be incapable of understanding or responding sensibly to an officer's questions or orders, so the officer must not assume that the person is simply being uncooperative. But even when officers understand that, they are left with the question of how to handle the difficult situation.

The question of physical threats is especially complex. If a person with a mental illness is brandishing a gun, knife, or other weapon, the threat can be real, or perhaps the threat is less serious than it appears. Officers must demonstrate compassion for the mentally ill person, while also protecting themselves and any bystanders.

At the COPS Office/PERF conference in Dearborn, Michigan, Dearborn Police Lieutenant Ronald Beggs said that this is a community-policing issue as much as a mental-health issue because a community will have greater respect for a police department that does everything possible to de-escalate these encounters and, if possible, avoid using force, particularly deadly force, against a person with a mental illness or disability.

The most widespread strategy for meeting this challenge is the use of Crisis Intervention Training (CIT), patterned after a system developed in Memphis in 1988 and commonly known as the "Memphis Model."[24]

CIT, which ranges from eight to 40 hours or more, teaches police officers how to interact and safely resolve encounters with community members suffering from mental illness.

23. *Civil Rights Investigations of Local Police* (see note 1).

24. *An Integrated Approach to De-Escalation and Minimizing Use of Force*, Critical Issues in Policing Series (Washington, DC: Police Executive Research Forum, 2012), 13, http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf.

Most of the police officials who participated in the December 11 meeting use CIT, with some variations.

**Anne Arundel County, Maryland: A dedicated crisis intervention team**

Some departments provide a certain level of training to all of their officers regarding encounters with persons with a mental illness. The Anne Arundel County (Maryland) Police Department has a different approach, training a limited number of officers in crisis intervention who then serve in a dedicated, centralized CIT. This team also includes mental-health clinicians, and it responds to all calls involving mentally ill persons or others in crisis.

The evolution of the police department's response in Anne Arundel began in 1999 with the creation of a 24-hour "warmline" (a telephone line that provides assistance for people who are either in crisis or in need of resources) and mobile crisis teams, made up of two clinicians who would accompany officers responding to these calls for service. Jennifer Corbin, director of the Anne Arundel County Crisis Response System, explained that the goal was to alleviate the burden placed on the police department by the high volume of calls for service involving persons with mental illness and to get patrol officers "back on the road."

However, the police discovered that in about 40 percent of these calls, it was either unsafe for the mental-health workers to assist with the response because the person appeared to be threatening, or if the mental-health clinicians were able to respond, they needed police officers to stay with them as support. So the patrol officers were not getting back on the road quickly.

In 2014, the Anne Arundel County Mental Health Agency partnered with the Anne Arundel County Police Department to create a Crisis Intervention Team. Made up of three police officers and three mental-health clinicians, the Crisis Intervention Team deploys in pairs—partnering police officers with clinicians—to every high-risk call involving a community member with a confirmed or suspected mental illness, or other conditions requiring special handling. The officers have received the full 40-hour CIT training, are certified instructors for mental-health "first aid," and are trained in peer support.

Corbin said the Crisis Intervention Team system is able to quickly and safely assess people and get them directly to treatment. As a result, 911 calls involving persons with mental illness have declined, because the system helps people get the mental health treatment they need.

A key component of the Crisis Intervention Team, Corbin said, is follow-up. The team officers build relationships with persons with mental illness, make regular visits to their homes to check on their condition, and are fully engaged in the delivery of "wraparound services" to deal with all aspects of the problem. The Crisis Intervention Team is also responsible for answering every call for service involving these persons. The result is that clients become familiar with the Team and build relationships with its members. Corbin said that Crisis Intervention Team members "have a passion for this work and really want to help the mentally ill."

**Madison, Wisconsin: Training as many officers as possible**

Retired Chief Wray said that when he was chief of police in Madison, he had an alternate approach to crisis intervention. "When we started in the late 1990s and early 2000s, we trained specific officers," he said, "but we found out that sometimes when a crisis arose on patrol, those crisis intervention officers would be tied up on something else, leaving us back at square one. So our approach was to provide training to as many patrol officers as possible, and I recommend training the whole patrol force, because you never know who's going to be dispatched to a scene."

**Kansas City, Kansas: Partnering with a mental health "co-responder"**

For the Kansas City (Kansas) Police Department, the goal is to have the entire force trained in crisis intervention by the end of 2016. The department also has a CIT "co-responder," a mental-health official who is available 24/7, "so that if a difficult incident occurs, such as a barricaded gunman or hostage situation, we can call her out," Chief Terry Zeigler said. "The CIT co-responder enables the department to help folks in mental crisis by connecting them with social programs available through nonprofits, rather than simply arresting them. We cannot arrest our way out of this problem."

Officers who respond to crisis intervention calls but are not CIT certified write a report that is forwarded to the co-responder for follow-up. The following day, the co-responder, along with a community policing officer, visits the individual at his or her residence for the purpose of trying to connect that person with social services. "The community policing officer then shares the information on the individual with all of his or her district patrol officers," Chief Zeigler said. That way, if there's a repeat call involving that person, responding officers have situational awareness of the person's history and can tailor their response accordingly. The program, Zeigler said, has been effective in reducing repeated calls for service for individuals dealing with mental illness.

**Dearborn, Michigan: Preventing violence by people with a mental illness**

The Dearborn Police Department not only focuses on response to people in crisis, but has also developed an Intervention Model that includes education and relationship-building components in order to potentially prevent incidents involving mental health crises.

Dearborn began developing this model after an active shooter incident at a local community college in 2009. After the incident occurred, "everybody said that it wasn't a surprise, that they knew that it was going to happen, but that they didn't know who to call about it," Lieutenant Ronald Beggs said. The Police Department contacted mental-health-care providers in the community and established relationships with them. The department also worked with academic subject matter experts to develop a framework for responding to incidents involving a mental-health crisis.

A key aspect of the Dearborn model is education. "We have to let the community know what resources are available, how to contact us, and to emphasize that it's not punitive," Lieutenant Beggs said. Another key is to identify community members who have been in distress and, along with a mental health professional, have casual conversations with them. During these conversations, the police officer or mental health worker often asks if the person has any firearms, and would be willing to voluntarily turn them over, perhaps temporarily, for safekeeping.

**New Haven, Connecticut: Working with Yale experts to mitigate child trauma**

The New Haven Department of Police Service created its Child Development-Community Policing Program (CD-CP Program) in 1991 in partnership with the Yale Child Study Center. The program is considered a national model for partnerships between the police and mental-health professionals who help children and families exposed to violence.[25] Its goal is to mitigate the effects that exposure to traumatic violence has on children and families.

The CD-CP Program brings together mental health professionals and police officers to offer each other training and support and to respond to acute incidents that involve children. Every supervisor in the New Haven Police Department has completed a Child Development Fellowship for Police Supervisors at the Yale Child Study Center. And clinicians from the Yale Child Study Center participate in a Police Fellowship for Clinicians at the Police Department.

Yale clinicians respond to calls with New Haven Police officers and conduct follow-up home visits. The police also hold conferences with

25. Steven Marans and Miriam Berkman, "Child Development—Community Policing: Partnership in a Climate of Violence," Juvenile Justice Bulletin (Washington, DC: U.S. Office of Juvenile Justice and Delinquency Prevention, 1997), https://www.ncjrs.gov/pdffiles/164380.pdf; see also "The Child Development—Community Policing Program," Yale School of Medicine, last modified September 25, 2013, http://medicine.yale.edu/childstudycenter/cvtc/programs/cdcp.aspx.

## Recommendations: Crisis intervention strategies

- Police should develop Crisis Intervention systems to improve the response to persons with mental illness, mental disabilities, drug or alcohol addictions, or other conditions that can cause them to behave erratically and dangerously.
- Crisis Intervention systems should be designed to prevent unnecessary use of force by police against persons in crisis, and to help these individuals obtain mental health treatment and other social services. Examples of crisis intervention systems currently used by police departments are:
  - Crisis Intervention training administered to the entire department so that everyone is equipped to properly handle mental health-associated crisis calls.
  - Development of Crisis Intervention Teams, which often involves pairing of officers with mental health clinicians for a joint response to calls involving a person with a mental illness.
- Follow-up should be included as a key component of any crisis intervention and response protocol.
- Intervention models should also include education and outreach components to identify community members who may be in distress, so that assistance can be administered before it reaches the level of crisis.
- Police should partner with clinicians from the mental health system in order to improve the delivery of services to people with a mental illness and more quickly connect them with appropriate mental health services and programs.

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the clinicians every Wednesday to review cases from the previous week and map out follow-up plans. Other components of the CD-CP Program include the Childhood Violent Trauma Clinic, which provides trauma assessment and targeted treatment for families whose experiences have left them at high risk of psychological impairment, and the Domestic Violence Home Visit Intervention Project, which provides home visits for children and families who have experienced domestic violence.

"It's expected that the officer who makes a referral will follow up and check on you," said New Haven Chief Dean Esserman. "In fact, it would be unheard of if we didn't."

Regardless of the form of interventions with persons in crisis, conference participants agreed that the response cannot be limited to a single acute incident, but must instead be holistic.

This means providing persons in crisis with social services, following up with them, and making every effort to ensure that their interactions with law enforcement will result in positive outcomes, and not the use of force.

### Examples of measured responses to mass demonstrations

How police approach a crowd of demonstrators will determine what you will get back from the crowd.

—Pittsburgh Police Chief Cameron McLay

A major element of police agencies' role as guardians of the Constitution is facilitating the community's First Amendment right to peaceful protest. In 2011, PERF brought police chiefs together to discuss new approaches to managing large-scale demonstrations and other major events.

A report on that conference recommends a "soft" approach to demonstrations, in which police work with protest leaders to deter any violence by agitators and ensure that protests can be conducted peacefully, without the need for arrests or uses of force by the police.[26]

26. *Managing Major Events: Best Practices from the Field* (Washington, DC: Police Executive Research Forum, 2011), http://www.policeforum.org/assets/docs/Critical_Issues_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf.

The role of police in facilitating peaceful demonstrations is especially critical when police actions or policies are the subject of the demonstrations.

Participants at the constitutional policing conference emphasized the importance of keeping lines of communication open between police and demonstrators, as well as ensuring that police responses are measured and proportional to what is happening during a demonstration.

**Boston: Engage protesters in respectful dialogue**

The philosophy of the Boston Police Department, Commissioner Evans said, is that "if we go looking for a fight with demonstrators, that's what we'll get." Instead, the Boston Police Department has adopted a policy of restraint and cooperation in dealing with crowds. The "optics" of a police response are also important; police in Boston and other cities avoid bringing heavy equipment to the scene of a demonstration or wearing protective "turtle gear" if there is no indication that a demonstration will be violent.

> We've learned through trial and error that interacting with people, for example asking them to kindly move along if necessary, is much more effective.
>
> —Boston Police Commissioner William Evans

The Boston Police Department's experience with Occupy Boston was crucial to the development of this approach to protesters. Commissioner Evans said that he learned the importance of engaging protesters in open and respectful dialogue.

Ideally, when demonstrations are planned days or weeks in advance, such as demonstrations about international economic summit meetings, police will be able to develop relationships with protest leaders long before the demonstration event begins, to discuss logistics and reach agreements about how it will be managed. During the Occupy protests, "we even had each other's cell phone numbers," Commissioner Evans said.

**Nashville: Demonstrate good faith**

Deputy Chief Brian Johnson of the Nashville Police Department emphasized the importance of "not looking for a fight" when engaging protesters. "An open dialogue without individual agendas is crucial to good relations," he said. A recent protest in the wake of Ferguson saw demonstrators march for a couple of miles from a church to police headquarters in Nashville.

"When we met them," Deputy Chief Johnson said, "we didn't meet them with a force of officers wearing helmets and masks and shin guards. We met them with about three officers and coolers full of ice water, because it was about 97 degrees that day. When there were protests after the grand jury decision in Ferguson, it was cold outside, so we met them with hot chocolate and coffee."

**New Haven: Avoid use of heavy armor and equipment**

Chief Esserman of New Haven said it is important to ensure that all officers understand that protesters should not be considered trouble-makers or "the enemy," but rather as community members exercising their First Amendment rights to freedom of speech, freedom to assemble peaceably, and freedom to petition the government for redress of grievances. With that in mind, officers show up with "no helmets, no sticks, no gas, no dogs, no bats, nothing deployed at all."

However, demonstrations sometimes are marked by violent agitators, often relatively few in number, whose intention is to provoke confrontations. The police response can be difficult to manage, particularly if the violent protesters scatter and embed themselves in the midst of peaceful demonstrators.

In some cases, police may need protective gear and equipment to maintain order. However, there was a general consensus that if police believe that a demonstration might turn violent, they should have equipment and additional officers on standby, away from the scene of a demonstration and out of sight, but close enough to be deployed promptly if necessary. If demonstrators see officers with heavy equipment from the very beginning of a demonstration, it sends the counter-productive message that the police are expecting trouble.

## Recommendations: Responding to mass demonstrations

- Avoid using riot gear or heavy equipment as an initial response to demonstrations.
- Police should open lines of communication with protest leaders as soon as they learn that a demonstration is being planned.
- A measured response to protesters and respectful, constructive dialogue are more legitimate—and more effective—than making arrests, using force, or employing tactics of intimidation.

### New technologies: Engaging the community and monitoring legal decisions

One of the most significant developments in policing over the last 10 to 20 years has been the advent of many new technologies with applications for police. In the last few years, the pace of new technologies seems to be accelerating.

A partial list of policing technologies that did not exist or were in their infancy a generation ago includes the following:

- Body-worn cameras, dash cams, and widespread use of cell-phone cameras
- Automated license plate readers
- Gunshot detection systems
- Social media such as Facebook, Twitter, and Instagram, which police can use (1) to share information with the public and (2) to obtain information about criminal suspects
- CompStat systems for analysis of crime patterns, and "predictive analytics" software
- Ubiquitous security cameras and automated monitoring of video footage—for example, to trigger an alert if a person leaves a package on a subway platform
- Drones
- Computerized crime mapping systems
- Biometric identification devices such as electronic fingerprint readers
- Cell phone tracking systems such as "Stingray" devices

Many technologies in policing have enormous potential for helping police to deter and prevent crime as well as investigate crimes that are committed. However, most technologies also raise concerns about privacy and civil liberties.

Furthermore, many technologies are so new that the U.S. court system has not yet ruled on how they may or may not be used without violating constitutional rights. Before courts make sweeping rulings on constitutional issues raised by new technologies, they generally prefer to wait long enough for a meaningful record of experience and facts to be developed with respect to how a technology functions in practice, and the concerns that are raised about it.

Thus, to a large extent, police agencies nationwide are on uncharted ground, experimenting with various technologies, often with little or no guidance from courts. For the time being, police leaders are free to try different technologies based on their own judgment about which technologies seem most useful, cost-effective, and compatible with the wishes of their communities. This experimentation will help provide the factual basis for courts eventually to hand down rulings that may set limits or conditions on different technologies.

As with the other issues discussed at the COPS Office/PERF conference, technology issues are not only a matter of legality and constitutionality, but are also a matter of legitimacy in the eyes of the communities that police departments serve. Often, communities differ in the extent to which they support technologies that raise privacy issues. Even within one city, people in different neighborhoods may have different opinions about the balance between privacy concerns and crime-reduction potential.

The use of new technologies in ways that are considered appropriate by the community and are found to be constitutional by the courts can reinforce relationships of trust between the police and the community, while sharply improving police agencies' ability to combat crime and keep communities safe.

**Legislative considerations**

In addition to constitutional issues and questions about whether a given technology will be considered legitimate by community members, there are many legislative issues that must be carefully studied because states and localities have various laws governing technologies. Often, the laws were written decades ago and do not reflect current realities. For example, most wiretap laws were written in the era of land-line telephones, and many freedom of information laws were intended to govern the release of written documents, not video footage from police cameras.

***Albuquerque: Body cameras and FOIA requests***

New Mexico offers an example of one such challenge. Albuquerque Assistant Police Chief Robert Huntsman said that the state's Inspection of Public Records Act mandates that all video recorded by the police must be made publicly available upon request. The police department, for its part, requires that its officers record everything when they are on duty.

What this means in practice is that any time police respond to a call, video of that encounter must be given to any member of the public who asks for it for any reason, even mere curiosity. Thus, the Albuquerque Police Department is contending with the issue of how to use new technologies like body cameras while protecting the privacy of crime victims, witnesses, or others who may not want their encounters with the police to be posted on YouTube or other public sites.

***Pittsburgh: Officer safety implicated by a state law***

For Chief Cameron McLay of the Pittsburgh Bureau of Police, a state law presents his department with a different challenge. The department is currently conducting a successful pilot program with body cameras, but McLay said that under Pennsylvania law, police officers would violate the state's wiretap laws (and potentially commit a felony) if they inadvertently enter a private residence while recording. He expressed concern that in a volatile or dangerous situation, an officer's attention might be unsafely diverted if the officer has to stop and remember to turn the camera off when entering someone's home. "I have heard some horror stories from officers in other jurisdictions who are messing around with their cameras in a deadly force situation, when they really shouldn't be worrying about that," he said. "So there are some issues. I am a big supporter of the concept in general, but I want to be deliberate with this."

**Data retention**

Another question facing law enforcement agencies is how long information gathered by equipment, such as license plate readers (LPR) and body-worn cameras, will be stored. This question of data retention usually hinges on how to effectively balance law enforcement's mandate to control crime with the privacy rights of community members.

***Prince William County, Virginia: Anticipating a shorter data retention time for license plate readers***

In Prince William County, Virginia, for example, the retention period for LPR data is currently six months, but Deputy Police Chief Barry Barnard expects that the legislature will shorten the retention period to 90 or fewer days, unless data is being used as evidence of a crime.

## Recommendations: Engaging the community in the adoption of new technologies

- When considering deployment of new technologies, consider issues of constitutionality, legality under state and local statutes, and perceptions of legitimacy in the eyes of community members. If courts have not yet ruled on the constitutionality of a certain technology, consult legal experts who may be able to provide informed speculation about how the courts will frame the issues. Make decisions about deployment with respect for the broad constitutional principles that are likely to control the courts' decisionmaking.
- Examine privacy implications and potential impact on community relationships before deploying new technologies.
- Develop clear policies, practices and training for officers when implementing new initiatives/ technologies.
- Implement a pilot program before widespread adoption of any new technology to determine feasibility and costs, and to obtain officer feedback.
- Host regular meetings with members of the community to educate them about technologies that the department is considering and to air any issues and concerns by community members.

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"We need to strike a balance between achieving our mission, protecting the LPR data and addressing the privacy concerns of the community," Deputy Chief Barnard said.

A number of police executives have said the LPR data generally does not need to be retained for long periods of time, because in most cases, if police want to search for a car in connection with a crime, they know within the first few days after the crime is committed that they will want the data.

***Camden, New Jersey: Long retention times are not usually needed***

For the Camden County Police Department, however, there is no uncertainty about LPR data. "Our license plate reader data retention policy is dictated by the state attorney general's directive," said Chief Thomson. "All police departments in New Jersey are required to hold that data for five years. We couldn't purge it if we wanted to." This is in contrast to the recordings from Camden's stationary security cameras, which are "overwritten within 30 days if we don't impound them for a specific reason," Thomson said.

Chief Thomson said that extended retention times generally are not integral to fighting crime. "We have gleaned some valuable intelligence from the technologies that we use, but it has been timely, not months after the fact," he said. "LPRs have alerted us to information from homicide suspects to NCIC (National Crime Information Center) fugitives to thousands of suspended drivers and uninsured vehicles," he said.

**The role of community relationships in the adoption of new technology**

One new technology in policing—body-worn cameras—is especially promising not only for reducing crime, but also for building trust between the police and community members.

New Orleans Deputy Superintendent Bardy said that body cameras increase accountability for both the police and the public. A number of police chiefs who have deployed body cameras have said that the presence of a video camera often results in both officers and community members behaving more politely.

In New Orleans, all members of the latest police academy class are equipped with body cameras, as is every officer who interacts with protesters.

Participants at the constitutional policing conference noted that technology, no matter how impressive and effective it may be, should never be seen as a substitute for building relationships

of trust between police departments and the community. Commissioner Evans of Boston said that body-worn cameras may serve as a "quick fix" for a department that has a record of treating community members rudely or abusively, "but if you don't establish relationships, if you are not working in the community, then nothing is going to really change. It's one piece of the puzzle, but the bottom line is that you've got to get rid of the culture that's causing the problems." Conference participants agreed that devices such as body-worn cameras should be used as part of a larger strategy to build legitimacy within the community.

An important part of this, said Chief Hadley of the Kalamazoo Police Department, is engaging community members in discussions about the adoption of new technologies, specifically body cameras, which generate much discussion.

Chief Will Johnson of the Arlington (Texas) Police Department took that approach when his department introduced an "unmanned aviation platform," or drone project, in 2010. While the program was initially controversial, the department made efforts to educate members of the community about the devices to alleviate concerns.

# Conclusion

The events of 2014, starting with the shooting of Michael Brown in Ferguson, Missouri, and continuing with use of force incidents in other cities and numerous public demonstrations nationwide and around the world, have impacted public attitudes about policing in many communities. The police have been challenged to confront questions about their policies, strategies, and culture, and to consider the impact that police practices have on the community, especially communities of color.

This is a difficult task, and one that demands that the police ask and answer hard questions about racial bias, hot spot policing, stop-and-frisk practices, use of force, and privacy rights.

Constitutional policing—adherence to the Bill of Rights and other provisions guaranteeing citizens' rights, as defined by the text of the Constitution and case law—is a minimum benchmark for police agencies. In addition to meeting constitutional standards, police should also consider the "legitimacy" and procedural justice of their actions in the eyes of their community members. If a community does not believe that the police perform their duties neutrally, fairly, and with respect, they will be less likely to defer to police authority. And without public support, policing becomes difficult or impossible.

So, what does constitutional and legitimate policing look like in practice?

- It means a willingness to discuss racial issues and perspectives—both within the policing profession and through ongoing dialogue with community members. Introducing Fair and Impartial Policing training is, for many departments, an important part of this process.
- It means ensuring that police officers are invested in the community and that community members are equally invested in the police department. Reorganizing the department in order to assign officers to neighborhood beats is one way of doing this. Other successful strategies for developing these relationships include inviting community members into the training academy as instructors and partnering community members with new officers so they may serve as ambassadors to the neighborhoods in which the officers will be working.
- It means equipping officers with the skills necessary to de-escalate potentially volatile situations and rewarding officers who do so.
- It means teaching officers how to successfully interact with members of the community who have a mental illness or other special conditions and making sure that those community members are connected with social services.
- It means facilitating peaceful protests and understanding that the role of the police is not merely to maintain order, but to protect everyone's First Amendment rights to free speech, freedom of assembly, and freedom to petition the government for redress of grievances.
- Finally, it means carefully considering the impact of adopting new police technologies and, based on input from the community, determining how technologies can strengthen relationships of trust between the police and the community.

The renewed focus on constitutionality and legitimacy of policing that has resulted from the events of 2014 is an opportunity for police to chart a new course based not only on successfully reducing crime rates, but also on achieving that success with the support of the communities most affected by police activity.

# Appendix A. Conference Participants

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New Orleans (LA) Police Department

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Fair and Impartial Policing

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Boston (MA) Police Department

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Columbia University

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Assistant Chief of Police
Houston (TX) Police Department

**Darryl Forté**
Chief of Police
Kansas City (MO) Police Department

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Chief Executive Officer
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# About the COPS Office

The Office of Community Oriented Policing Services (COPS Office) is the component of the U.S. Department of Justice responsible for advancing the practice of community policing by the nation's state, local, territorial, and tribal law enforcement agencies through information and grant resources.

Community policing begins with a commitment to building trust and mutual respect between police and communities. It supports public safety by encouraging all stakeholders to work together to address our nation's crime challenges. When police and communities collaborate, they more effectively address underlying issues, change negative behavioral patterns, and allocate resources.

Rather than simply responding to crime, community policing focuses on preventing it through strategic problem solving approaches based on collaboration. The COPS Office awards grants to hire community police and support the development and testing of innovative policing strategies. COPS Office funding also provides training and technical assistance to community members and local government leaders, as well as all levels of law enforcement.

Another source of COPS Office assistance is the Collaborative Reform Initiative for Technical Assistance (CRI-TA). Developed to advance community policing and ensure constitutional practices, CRI-TA is an independent, objective process for organizational transformation. It provides recommendations based on expert analysis of policies, practices, training, tactics, and accountability methods related to issues of concern.

Since 1994, the COPS Office has invested more than $14 billion to add community policing officers to the nation's streets, enhance crime fighting technology, support crime prevention initiatives, and provide training and technical assistance to help advance community policing.

- To date, the COPS Office has funded the hiring of approximately 125,000 additional officers by more than 13,000 of the nation's 18,000 law enforcement agencies in both small and large jurisdictions.
- Nearly 700,000 law enforcement personnel, community members, and government leaders have been trained through COPS Office-funded training organizations.
- To date, the COPS Office has distributed more than eight million topic-specific publications, training curricula, white papers, and resource CDs.
- The COPS Office also sponsors conferences, roundtables, and other forums focused on issues critical to law enforcement.

The COPS Office information resources, covering a wide range of community policing topics—from school and campus safety to gang violence—can be downloaded at www.cops.usdoj.gov. This website is also the grant application portal, providing access to online application forms.

# Notes

On December 11, 2014, the Police Executive Research Forum, in partnership with the U.S. Department of Justice's Office of Community Oriented Policing Services, convened a conference in Washington, D.C., titled *Constitutional Policing as a Cornerstone of Community Policing*. Police executives, federal officials, academics, and civil rights leaders came together at this one-day conference to develop strategies for promoting constitutional policing as part of the day-to-day work of policing. This report documents the proceedings of the conference and the strategies that were recommended to promote the practice of constitutional policing.

COPS
Community Oriented Policing Services
U.S. Department of Justice

Police Executive Research Forum

U.S. Department of Justice
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To obtain details about COPS Office programs, call the COPS Office Response Center at 800-421-6770.

Visit the COPS Office online at **www.cops.usdoj.gov**.

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