Testimony to the President's Task Force on 21st Century Policing

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Every era presents the police, and the legal system more generally, with distinct issues. We are emerging from an historical period during which a key law enforcement concern was the control of violent crime. We should first remind ourselves that the backdrop of current policing models lies in the high levels of crime in the 1970's and 1980's, and the feelings of disorder and fear that these crime levels created in many American communities.[1]

Over the years the level of violent crime has declined[2], at least in part due to the police, while at the same time the police have generally become more professional and effective, as documented in the 2004 report of the National Academy of Sciences.[3] There is a lot to be proud of in American policing and in the role the police played in meeting the challenges of this earlier era.

Today, violent crime is at historically low levels and there is an opportunity to rethink the goals of policing as we move forward in the 21st century. In rethinking these goals, I believe that it is particularly important to focus attention on building public trust in the police, i.e. on issues of police legitimacy.

Why should police legitimacy be a central concern? During the same decades in which crime declined, public trust in the police has not generally increased in America. It has remained about the same, with only 50-60% of adult Americans expressing trust and confidence in the police. Further, there has been a large and persistent racial gap in trust, with African Americans 20-30% less likely to express trust in the police. This gap has not disappeared as the crime rate has fallen.[4] These low levels of trust have contributed to a series of racially tinged controversies about the actions of police officers, in incidents ranging from the Rodney King case in Los Angeles to the Eric Garner case in Staten Island.[5]

Given the currently low crime rates and resulting public feelings of greater safety, this is an ideal time to address the issue of police legitimacy and to make building trust and confidence a core objective of 21st century police policies and practices. Such a focus on public trust and confidence in the police need not undermine control crime efforts. Instead, building police legitimacy can be a different and, studies suggest, an equally or even more effective way to manage crime. Recent research reviews make clear both that aggressive, force based policing is at best minimally useful as a crime management strategy[6] and that building trust in the police, the courts and the law is more effective as a long-term crime control approach.[7] When people have greater trust in the police, they are more likely to both obey the law and cooperate with the police.[8] Legitimacy facilitates crime control both directly, because it lowers people's likelihood of committing crimes, and indirectly, because it increases public cooperation, which allows the police to achieve higher clearance rates.

A focus on legitimacy is not a new one for policing. During his early efforts to organize the police in London, Robert Peel famously talked about "policing by consent" and argued for the virtues of public support for police activities.[9] This theme has been a part of policing ever since that time. It was particularly prominent in America during the 20th century, when community policing policies were developed.[10]

Legitimacy based policing is further valuable because it facilitates the achievement of a broader set of community goals. One is to provide a framework for reshaping police forces to help address the current challenges facing American cities. As crime has ebbed, the need for a large and insular police force has declined, providing an opportunity to rethink the structure of police forces. Promoting legitimacy is first a path to building the type of cooperation with the public that allows for the co-policing of communities to maintain social order. Working closely with the community will allow police officers to more efficiently maintain the gains in crime control that have already been achieved, freeing up scarce public resources to meet other challenges.

Finally, models of policing for the 21st century should be based upon the recognition that "you cannot arrest your way out of crime." Crime control is dependent upon economic and social development. And a trusted police force is central to providing the background of reassurance that encourages the people in communities to join together to revitalize themselves socially and economically by motivating people to work in them, shop in them, go out for entertainment in them and otherwise actively participate in community life.[11] Fear of crime undermined communities in an earlier era; but today the police can help build communities by projecting safety and reassurance.

Fortunately, we know a lot about how to strengthen trust in the police. Research findings make it very clear that when the public's evaluations focus on whether they feel that the police - either police departments or individual police officers - are exercising their authority fairly.[12] This procedural justice finding has been widely replicated and suggests that people care both about whether the police make decisions fairly and whether they treat members of the public respectfully.[13]

In terms of fair decision making, the public wants to be listened to when policies are being created, as well as wanting to have an opportunity to state their case when dealing with individual police officers. They also want explanations for police actions that allow them to see that the police are acting in unbiased ways and in accordance with policies that connect to understandable and shared objectives.

In the case of quality of treatment people look for an acknowledgement of their needs and concerns and for evidence of sincere efforts to act on behalf of the community on the part of the police. The issue of respect has been particularly central to recent public controversy regarding the police, with people believing that the police treat members of the public, especially those belonging to minority groups, in demeaning, discourteous, and disrespectful ways. If people

believe that the police are fair, they trust them and they defer to their authority.[14] They also cooperate by reporting crime and criminals. And they are less likely to react to incidents such as those recently experienced in Ferguson and Staten Island with outrage and violence.[15] If the police are trusted, people are more likely to give them the benefit of a doubt, allowing the police time to investigate and respond to contentious police actions. Overall the public is willing to give trusted police greater discretion in their efforts to enforce the law.

These findings have clear policy implications. They suggest that policing can gain when every policy and practice implemented by the police is evaluated not only in terms of its crime control utility but also in terms of its perceived fairness. Every encounter with the public is a teachable moment, and police departments and officers should ask what they are teaching the public about the police.

This approach matters because it provides a new perspective on a series of issues that have created ongoing controversy, including racial profiling, broken windows policing, aggressive street stops, and police use of force.[16] In each case the public perception of and reaction to what the police are doing has become an issue in and of itself, beyond actual police actions. In today's media climate this appears inevitable, so the police need to ask in advance how their actions are likely to be viewed by the public, both those likely to have contact with officers and people in the community at large. The answer to this question should shape both what the police do and how they do it. In particular, when the police have reasons for taking actions that impact upon peoples' lives, they need to focus on taking those actions in ways that the public will experience as being fair.

Police officers need to be trained to recognize the importance of fair treatment as well as being provided with strategies for achieving the goal of strengthening public trust. Police training can enable commanders to identify policies that build trust and help officers on the street to know how to conduct themselves in ways that achieve the same goal. Such training is not only for the benefit of the public. Officers better trained in tactics for deescalating conflict and building trust are less likely to encounter resistance and hostility on the street, less likely to need to resort to the use of force and therefore more likely to be safe.

We need to evaluate policies themselves and think about how they are experienced by the public. For example, being repeatedly stopped by the police on the street or in a car leads people to question police policies, no matter how fairly the police officers involved are acting.[17] Again, the point is that when policies and practices are being evaluated the evaluation should include not only a consideration of the immediate impact of a policy on crime, but also the impact of that same policy on trust in the police, something which has a long term impact on crime.

Understanding the impact of police policies has become a particularly central issue in recent years because the police have increasingly sought to prevent crime through proactive policing. This approach brings the police into more frequent contact with the public, either through broken

windows approaches that focus on arrests for minor crimes or broad practices of police stops of citizens in search of drugs and guns. Research findings suggest that a long term consequence of these broader proactive police practices has been to undermine trust, and build hostility toward the police. This is especially true when the police engage of widespread stops of people who are not committing crimes. Additionally, arrests for minor crimes draw people into further contacts with the criminal justice system and those further contacts have the general effect of undermining people.[18]

The nature of police contacts is particularly important when the police are dealing with young people. Unfortunately, such contacts are frequent because young people are involved in a large number of the crimes that occur.[19] We know from research on adolescent development that young people lack the cognitive and emotion management skills needed to make good judgments about rule breaking.[20] Fortunately, almost all the adolescents who commit crimes go on to develop into law abiding adults if left alone.[21] On the other hand, contact with criminal justice authorities such as the police, the courts and the prison system diminishes the likelihood of such positive development and increases the probability of future criminal conduct.[22] Conversely, fair treatment builds legitimacy. Hence we particularly need to focus on the nature of police contact with adolescents.

These findings are counter to the arguments of the broken windows approach, which argues that minor crimes are the gateway to future major crimes.[23] However that argument itself ignores the literature on adolescent development, much of it aided by recent findings in neuroscience, which shows that adolescents' cognitive and emotional regulation abilities are not fully developed. As these individual capacities develop through maturation the frequency of law breaking behavior declines. This occurs irrespective of what the police do in response to crime.

Beyond juveniles there are several other groups who are important for the police. One is the general population of high crime neighborhoods. A key finding of recent research on crime is that even within high crime areas most violent crime is concentrated in a small proportion of the people who can be identified through techniques such as network analysis.[24] This means that in any area there is a large group of residents whose cooperation can be engaged through trust building strategies, while a small group of violent offenders is managed through surveillance and sanctioning. In such situations targeted strategies against violence are the most productive. Targeted police activity can lower the rate of particular crimes in chosen neighborhoods in the short term.[25]

Finally efforts to change the culture of policing need to focus on addressing police officers job related concerns.[26] Two such concerns are safety and health. As everyone in this room is aware, policing is a dangerous job and not only dangerous out on the street. The stress of policing leads to high levels of suicide, alcoholism, divorce and physical and mental health maladies. Being shot is unfortunately not the only risk that policing poses, although it may be the most visible.

The daily task of policing under sometimes dangerous and hostile conditions promotes stress which has broad negative consequences for the lives of officers.[27]

Interviews with police officers suggest that the same types of fairness that the public wants from them, police officers want from their commanders.[28] And, like members of the public, officers often feel that they do not receive basic fairness within their own station houses. Hence, it is also important to rethink the organization of police forces to give field officers more opportunities to express their views, better explanations of the goal of department policies, more transparent procedures for discipline and promotion, and more respectful treatment. If officers experience these types of fairness in their station houses they are then more likely to display them on the street.[29]

Why? Studies show that police officers who feel fairly treated do their jobs better[30]; have fewer of the symptoms of stress that medical studies link to problems with physical health and to alcoholism, divorce, and suicide[31]; are less likely to use force in their everyday interactions with the community; and are generally more likely to treat people in the community fairly. This style of policing, in turn, minimizes conflict and promotes both the acceptance of police authority and officer safety.[32]

In making the points that I have today, I have often referred to research findings. One of the most important recommendations that I have for the task force is that it endorse the argument that public policy should be evidence based. This argument is an important one in all areas of government but it is particularly important within policing. Evidence based criminology provides a research basis for evaluating policies and practices related to crime and to policing. In the case of legitimacy based policing there are a number of studies that support the points I am making today. But beyond the ideas discussed here, I strongly endorse the principle that policing be informed by empirical studies that tell us what works. The argument that a medicine has to be proven to work before it can be prescribed applies equally to a model of policing, regardless of who is advocating it. But for such research to be most useful we need to have a broader focus than just the crime rate. We also have to study what shapes legitimacy.

Beyond research the Federal government needs to support innovations in policing. Just as it promoted community policing during that era, the Federal government should promote legitimacy based policing by providing funds for training and for the additional costs associated with initiating such program, for example, costs associated with embedding officers in neighborhoods to create mutual trust and support.[33]

There is a much cited saying that a crisis is also an opportunity. While this is a turbulent time for American policing, it is also an occasion for rethinking the mission of our police in a 21st century society. Thank you for allowing me to provide you with ideas about how to achieve that goal.

Biography

Tom R. Tyler is the Macklin Fleming Professor of Law and Professor of Psychology at Yale University. His research explores the dynamics of authority in groups, organizations, and societies. In particular, he examines the role of judgments about the justice or injustice of group procedures in shaping legitimacy, compliance and cooperation. His work examines these psychological dynamics in the courts, with the police and in prisons. In each case he suggests the importance of encouraging legitimacy based approaches to the exercise of law and legal authority, with the goal of motivating self-regulatory behavior. This includes voluntary deference to legal authorities and acceptance of their decisions, as well as willing cooperation with efforts to manage social order. He has also studied the internal dynamics of legal institutions and argues for a similar approach to their design, emphasizing more participatory approaches to the organization of court systems and police departments. He is the author of several books, including *The social psychology of procedural justice* (1988); *Social justice in a diverse society* (1997); *Cooperation in groups* (2000); *Trust in the law* (2002); *Why people obey the law* (2006); and *Why people cooperate* (2011). He received his Ph.D. in social psychology from UCLA in 1978. Since then he has taught at Northwestern University; the University of California at Berkeley; and New York University.

[1] Bayley, D. & Nixon, C. (2010). *The changing environment for policing, 1985-2008*. Kennedy School of Government.

[2] Sourcebook of Criminal Justice Statistics Online." http://www.albany.edu/ sourcebook/ pdf/ t2122011.pdf

[3] Skogan,W. & Frydl, K. (2004). *Fairness and effectiveness in policing: The evidence*. National Academy of Science: National Research Council.

[4] Public views about the police have been surveyed by a variety of groups, including the Gallup Poll and the Pew Research Center. Results are available from those groups directly or through the Sourcebook of Criminal Justice Statistics Online." http://www.albany.edu/ sourcebook/ pdf/ t2122011.pdf.

[5] Studies conducted by the Pew Research Center indicate dramatically different understandings of each of these police related events. In each case African Americans were found to be much more skeptical of police neutrality and of the motivations of police officers than are Whites.

[6] Paternoster, R. (2006). How Much Do We Really Know About Criminal Deterrence? *Journal of Criminal Law and Criminology*. 100: 765-824; Pratt, Travis C., Francis T. Cullen, Kristie R. Blevens, Leah E. Daigle, and Tamara D. Madensen. (2008).The empirical status of deterrence theory: A meta-analysis. In *Taking stock: The status of criminological theory*, eds. Francis T. Cullen, John Paul Wright, and Kristie R. Blevins, 367–96. New Brunswick: Transaction Publishers, p. 383; McCluskey, J.D. (2003). *Police Requests for Compliance: Coercive and procedurally just tactics*. NY: LFB Scholarly Publishing.

[7] Tyler, T.R. (2009). Legitimacy and criminal justice: The benefits of self-regulation. *Ohio State Journal of Criminal Law*, 7, 307-359; Tyler, T.R. & Jackson, J. (2014). Popular legitimacy and the exercise of legal authority: Motivating compliance, cooperation and engagement. *Psychology, Public Policy and Law*, 20, 78-95.

[8] Fagan, J. & Piquero, A.R. (2007). Rational choice and developmental influences on recidivism among adolescent felony offenders. *Journal of Empirical Legal Studies*, 4(4), 715-748; Jackson, J., Bradford, B., Hough, M., Myhill, A., Quinton, P. & Tyler, T.R. (2012). Why do people comply with the law? Legitimacy and the influence of legal institutions. *British Journal of Criminology*, 52, 1051-1071; Jackson, J., Bradford, B., Stanko, B. & Hold, K. (2013). *Just authority?: Trust in the police in England and Wales*; Sunshine, J. & Tyler, T.R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law and Society Review*, 37, 513-548; Tyler, T.R. & Fagan, J. (2008). Why do people cooperate with the police? *Ohio State Journal of Criminal Law, 6,* 231-275; Tyler, T.R., Fagan, J. & Geller, A. (2014). Street stops and police legitimacy. *Journal of Empirical Legal Studies*, 11(4), 751-785.

[9] Lentz, S.A. & Chaires, R.H. (2007). The invention of Peel's principles: A study of policing "textbook" history. Journal of Criminal Justice, 35, 69-79.

[10] Fischer, C. (2014). *Leadership and procedural justice: A new element in police leadership.* Police Executive Research Forum.

[11] Kochel, T.R. (2012). Can police legitimacy promote collective efficacy? *Justice Quarterly*, 29(3), 384-419; Tyler, T.R. & Jackson, J. (2014). Popular legitimacy and the exercise of legal authority: Motivating compliance, cooperation and engagement. *Psychology, Public Policy and Law*, 20, 78-95.

[12] Brunson, R.K. & Gau, J.M. (2014). Race, place, and policing the inner-city. In M. Reisig & R.J. Kane (Eds.). *The Oxford Handbook of Police and Policing* (pp. 362-382). Oxford University Press; Dai, M., Frank, J. & Sun, I. (2011). Procedural justice during police-citizen encounters: The effects of process-based policing on citizen compliance and demeanor. *Journal of Criminal Justice*, 39, 159-168; Gau, J.M. & Brunson, R.K. (2010). Procedural justice and order maintenance policing. *Justice Quarterly*, 27, 255-279; Hinds, L. (2009). Youth, police legitimacy and informal contact. *Journal of Police and Criminal Psychology*, 24, 10-21; Jackson, J., Bradford, B., Stanko, B. & Hold, K. (2013). *Just authority?: Trust in the police in England and Wales*; Mazerolle, L., Bennett, S., Davis, J., Sargeant, E. & Manning, M. (2013a). Procedural justice and police legitimacy: A systematic review of the research evidence. *Journal of Experimental Criminology*, 9, 245-274; Reisig, M.D. & Lloyd, C. (2009). Procedural justice, police legitimacy, and helping the police fight crime. *Police Quarterly*, 12(1), 42-62; Reisig, M.D., Tankebe, J. & Mesko, G. (2013). Compliance with the law in Slovenia: The role of procedural justice and police legitimacy. *European Journal of Criminal Policy Research*, 20, 259-276; Tyler, T.R. (2006). *Why people obey the law*. Princeton: Princeton University Press; Tyler, T.R. & Fagan, J. (2008). Why do people cooperate with the police? *Ohio State Journal of Criminal Law, 6,* 231-275; Tyler, T.R. & Huo, Y.J. (2002). *Trust in the law*. NY: Russell-Sage.

[13] Sunshine, J. & Tyler, T.R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law and Society Review*, 37, 513-548; Tyler, T.R. & Fagan, J. (2008). Why do people cooperate with the police? *Ohio State Journal of Criminal Law, 6,* 231-275; Tyler, T.R. & Jackson, J. (2014). Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement. *Psychology, Public Policy and Law*, 20, 78-95.

[14] Tyler, T.R. & Huo, Y.J. (2002). *Trust in the law*. NY: Russell-Sage.

[15] Hohl, K., Stanko, B. & Newburn, T. (2012). The effect of the 2011 London disorder on public opinion of the police and attitudes towards crime, disorder, and sentencing. *Policing*, 7, 12-20; Jackson, J., Huq, A.Z., Bradford, B. & Tyler, T.R. (2013). Monopolizing force? Police legitimacy and public attitudes toward the acceptability of violence. *Psychology, Public Policy and Law,* 19, 479-497.

[16] Tyler, T.R. & Wakslak, C. (2004). Profiling and the legitimacy of the police: Procedural justice, attributions of motive, and the acceptance of social authority. *Criminology, 42, 13-42.*

[17] Epp, C.R., Maynard-Moody, S. & Haider-Markel, D. (2014). *Pulled over: How police stops define race and citizenship*. Chicago; Glaser, J. (2014). *Suspect race: Causes and consequences of racial profiling*. Oxford; Tyler, T.R., Fagan, J. & Geller, A. (2014). Street stops and police legitimacy. *Journal of Empirical Legal Studies*, 11(4), 751-785.

[18] Kohler-Hausmann, I. (2013). Misdemeanor justice: Control without conviction. *American Journal of Sociology*, 119, 351-393.

[19] Brame, R., Turner, M.G., Paternoster, R. & Bushway, S.D. (2012). Cumulative prevalence of arrest from ages 8 to 23 in a National sample. *Pediatrics*, 129, 21-27.

[20] Steinberg, L. (2014). *Age of opportunity: Lessons from the new science of adolescence*. Boston: Houghton Mifflin Harcourt.

[21] Sampson, R.J. & Laub, J.H. (1993). *Crime in the making: Pathways and turning points through life*. Harvard; Scott, E.S., & Steinberg, L. (2010). *Rethinking juvenile justice*. Cambridge, MA: Harvard University Press.

[22] Petrosino, A., Guckenburg, S. & Turpin-Petrosino, C. (2010). *Formal system processing of juveniles: Effects on delinquency*. Campbell Collaborative Review.

[23] Kelling, G.L. & Wilson, J.W. (1982). Broken windows. *The Atlantic.*

[24] Papachristos, A., Braga, A. & Hureau, D. (in press). Social networks and the risk of gunshot injury. *Journal of Urban health.*

[25] The other smaller group that is of concern are the small group of persistent violent offenders. If the police have the trust of most of the people in the community they can target their resources toward that group. However, it should not be assumed that only the threat or the use of force matters. Recent studies by Tracey Meares, Andrew Papachristos and Jeffrey Fagan show that even those with a history of violence respond favorably to trust building strategies based upon respectful treatment. See Meares, T.L., Papachristos, A. & Fagan, J. (2007). Attention felons. *Journal of Empirical Legal Studies*, 4(2), 223-272; Papachristos, A.V., Meares, T. & and Fagan, J. (2007). Attention Felons: Evaluating Project Safe Neighborhoods in Chicago. *Journal of Empirical Legal Studies,* 4, 223-250; Papachristos, A.V., Meares, T.L., Fagan, J. (2012). Why do criminals obey the law? *Journal of Criminal Law and Criminology*, 102, 397-440.

[26] One concern the police have that is easy to address in that it is costless is for greater public recognition of their success in doing a difficult and often thankless job.

[27] Komarovskaya, I., Maguen, S., McCaslin, S.E., Metzler, T.J., Madan, A., Brown, A.D., Galatzer-Levy, I.R., Henn-Haase, C. and Marmar, C.R. (2011). The impact of killing and injuring others on mental health symptoms among police officers. *Journal of Psychiatric Research*, 45, 1332-1336; MacNair, R.M. (2002). Perpetration-induced traumatic stress in

combat veterans. *Peace and conflict: Journal of Peace Psychology*, 8, 63-71; Robinson, H.M., Sigman, M.R. & Wilson, J.P. (1997).
Duty related stressors and PTSD symptoms in suburban police officers. *Psychological Reports,* 81, 831-845.

[28] Tyler, T.R., Callahan, P. & Frost, J. (2007). Armed, and dangerous(?): Can self-regulatory approaches shape rule adherence among agents of social control. *Law and Society Review*, 41 (2), 457-492.

[29] Bradford, B., Quinton, P., Myhill, A. & Porter, G. (2014). Why do 'the law' comply? Procedural justice, group identification and officer motivations in police organizations. *European Journal of Criminology,* 11, 110-131; Trinkner, R. & Tyler, T.R. (2015). *Justice from within: How procedural justice in police culture shapes the institution, the officer, and the community*. Unpublished manuscript, Yale Law School.

[30] Trinkner, R. & Tyler, T.R. (2015). *Justice from within: How procedural justice in police culture shapes the institution, the officer, and the community*. Unpublished manuscript, Yale Law School; Wolfe, S.E. & Piquero, A. (2011). Organizational justice and police misconduct. *Criminal Justice and Behavior*, 38, 332-353.

[31] Robbins, J.M., Ford, M.T. & Tetrick, L.E. (2012). Perceived unfairness and employee health: A meta-analytic integration. *Journal of Applied Psychology*, 97, 235-272.

[32] Belvedere, K., Worrall, J.L. & Tibbetts, S.G. (2005). Explaining suspect resistance in police-citizen encounters. *Criminal Justice Review*, 30(1), 30-44; McCluskey, J.D. (2003). *Police Requests for Compliance: Coercive and procedurally just tactics*. NY: LFB Scholarly Publishing.

[33] New Haven, for example, has new officers work within neighborhoods for their first year on the job. See Lips, E. & Swift, J. (1/3/2015). Homicides, violent crimes in New Haven down in 2014. New Haven Register.