



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy.

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Law Enforcement: Reform, Accountability and Communication | Oct. 25 | OAS Episode 47

Welcome to “Our American States,” a podcast of meaningful conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy. For the National Conference of State Legislatures, I’m your host, Gene Rose.

States work to improve community safety in a number of ways, including the reduction of serious crime, ensuring fair enforcement of the laws and increasing police effectiveness.

An October 2000 poll by the Charles Koch Institute and the Police Foundation found that Americans feel interactions with police are getting worse around the nation, but not necessarily in their own community. State lawmakers are looking at a variety of approaches to improve community safety and increase police effectiveness.

Our guests today are going to provide deep insight into the issues of policing, policy, cost, communication between communities and law enforcement agencies, and the need for criminal justice reform including alternatives to incarceration of people needing mental health treatment.

Later in the program we will talk with Ron Serpas, a former police superintendent of New Orleans and currently the executive director of Law Enforcement Leaders, an organization of more than 200 current and former police chiefs, sheriffs, federal and state prosecutors and attorneys generals from all 50 states working for a reduction in both crime and incarceration.

Let’s start off our program with someone who is pushing for more community involvement with law enforcement agencies and an advocate for examining the cost effectiveness of funds we spend on public safety.

Joining us as our guest is Barry Friedman, a professor at New York University School of Law and the director of its Policing Project. His latest book is “Unwarranted: Policing without Permission.” Barry, as I understand it, the Policing Project at the New York University School of Law works to better connect communities with law enforcement agencies. Is that correct?

Barry: Yes, Gene, it is. We are dedicated to the idea that we should bring the community’s voice to policing, and so we work with both community organizations and policing organizations and many other state local officials to do just that.

Gene: From your perspective, what has happened in recent years with regard to highly publicized police shootings? Do you believe they are creating a larger divide between communities and law enforcement?

Barry: So, that question has a little bit of a hidden trick to it that I want to step around in the following sense. Sometimes folks are of the impression that there are more shootings than there have been in the past, that something has changed. But the only thing that has really changed is our awareness of those shootings. This sort of thing has been going on for a long time.

And in the communities that experience it most acutely, including other forms of policing like stop-and-frisk, I think those relationships were already badly damaged. The fact of that damage has just become much more public for the rest of us and raised, I think, the interest in some quarters to try to do something about it.

Now, can we do something about it? Most certainly. It means healing the trust that's been broken between law enforcement and members of the community. And healing that trust means learning to work together, learning for law enforcement to be responsive to what it is that the community wants and what the community is concerned about.

Gene: And what is your organization doing to try to bridge that divide?

Barry: So we do all kinds of things. We work on the ground in a number of locations: Chicago, Nashville, Tampa, Tucson, Cleveland ... we've worked in L.A. and New York, Camden. And everywhere that we work, among the other sorts of things that we do, we're trying to figure out models of bringing the community's voice to policing.

The concept of the Policing Project is that when we talk about accountability in government, we mean something very different in policing than in the rest of government, and we ought to fix that. So in policing when we talk about accountability, when you think about what you read in the news, it's all about criminal prosecutions and civilian review boards, what we call after-the-fact-accountability —something's gone wrong.

What we're trying to do is bring front-end accountability to policing, the same thing that you see in the rest of government where there is transparent policymaking and people are involved in it. The problem in policing is that we don't really have models to do that; that has not been our history. And so our goal and our task in the places where we work is to try out different models of getting the community to have voice, whether it's a citizens advisory board for the police department, or drafting an ordinance to create a police commission, or working in a more kind of local neighborhood level.

So we have two pilots going on in Chicago right now that involve intensive community policing and community engagement with the department. When I say neighborhood, those two districts that we're doing this in each has 200-some thousand people in it, so it's not so small. That's a fair-sized city for some folks.

But all of our work is trying to bring the community's voice to policy.

Gene: Your organization has created a Statement of Principles of Democratic Policing, which has been approved by various law enforcement agencies. Explain to us what that is.

Barry: Sure. So when we started the Policing Project with this goal of bringing a set of democratic principles to policing, the community's voice to policing, we were urged by a very wise counselor by the name of Anne Milgram, who used to be the attorney general of New Jersey and who at the time was with the Arnold Foundation, to work with the police. And the Arnold Foundation hosted an initial convening that we had to sort of explain what we were about and the kind of work that we wanted to do to a bunch of law enforcement officials, leading law enforcement officials from around the country.

And at the end of that convening, at the request of Chuck Ramsey, who at that time was the chief in Philadelphia and who had been the co-chair of the president's Taskforce on 21st Century Policing, he said: Let's draft up a manifesto. Give us something we can sign. We're all excited about this.

So we drafted it up; it's on our website, www.policingproject.org, and all of the folks at the convening signed it. So then we thought well, this is great; let's go to some law enforcement organizations and see if they buy in, and a bunch of them did and they signed it too. And so we've just started to flip around and ask some civil liberties organizations to join and, in addition, given our listenership here, if any state or local organizations or entities wanted to sign on, we'd be glad to have you.

What the Statement of Democratic Policing Principles does is basically say what front-end accountability around policing should look like, and it's just a very simple set of principles that says: You want to engage with the communities so that they have voice. You want to do some cost-benefit analysis around policing practices to make sure that what you're doing does more good than harm. And you want to be transparent to the extent that you can be consistent with whatever needs there are of law enforcement for secrecy.

Gene: The New York Police Department last year developed a new body camera policy after working with your organization. Was public comment included in this process and how did that come about?

Barry: Oh, yes. I laugh because that was quite the venture. So our first project ever was in Camden, New Jersey and the chief there, Scott Thompson, is very wonderful; he's the co-chair of our advisory board. And he asked us to come and help him with his body camera policy in order to get public input. So we went to Camden and we had a survey and we held some public meetings and we wrote a report and Camden revised its body cam policy in response.

And New York learned about this and there had been somebody from the NYPD at our original convening, and they said: Well, why don't we do this in New York? We have to get a body camera policy up. So over a very crazy summer, we reached out. We heard from, oh, I can't remember the number, but I think it was 30,000 people, and some 50 organizations, and we did a lot of work to summarize all of that for the NYPD and wrote a report. And then they changed their body camera policy.

They didn't accept everything that the public wanted and there were some folks at some organizations that were quite frustrated by that. But they did listen and they did thoughtfully respond to everything that they were asked, including explaining why they couldn't do what they didn't do.

Gene: Are there other cities looking at adopting similar policies?

Barry: Well, it's actually interesting and "Unwarranted," the book, covers a lot of the rules about the Fourth Amendment and what constitutes constitutional policing and a lot about technology, and body cameras are obviously a form of technology. But the main thrust of the book is that we need to have democratic engagement around policing, that policing and police officials and police officers have suffered because they haven't involved the public on the front end in deciding what policing should look like.

And I want to stress, by the way ... I hope there are some folks from law enforcement listening and we spend our days working all day long with law enforcement—just like the rest of government, it's never an obligation that law enforcement do everything that the public wants. It's that, as with the rest of government, that they be open to hearing from the public and that they be responsive including explaining why they can't do certain things.

Well, the irony is even though there is not much of this sort of front-end accountability in most of policing, there's been a ton of it around body cameras, almost too much maybe. I mean, it seems like every town, hamlet and village in the United States of America has had some kind of public input into their body camera policies and we're kind of inventing them over and over and over again. So it's healthy, but it's been a lot of work.

One of the most interesting things we've done around body cameras is that the City of Los Angeles is somewhat unique in that it has a police commission that's actually non-police officials who run the police department, and there was controversy in Los Angeles about releasing video from body cameras after officers had shot somebody, and that kind of controversy has gone on all over the country.

And so the police commission asked us to come in and get public input into what a policy might look like involving release of body camera footage after an officer-involved shooting. We did that. We had meetings and surveys and heard from a lot of organizations and we wrote a report to the L.A. Police Commission. And they've since adopted a rule that requires the release of body camera footage after a certain period of time. And that is something that we're actually hoping we can turn into a model for the rest of the country.

Gene: In a column you wrote for the Washington Post last year you said: "The United States shells out well over \$100 billion each year for public safety. We have remarkably little idea whether that money is well spent." Do you believe more should be done to require a benefit cost analysis for what is spent on public safety?

Barry: For that question you get a hearty yes from me. I think one of the things that is most startling about the way we think about policing and regulate policing is the absence of cost-benefit analysis. Cost-benefit analysis is used throughout government and throughout private business

to figure out what's the right thing to do. It asks a very simple question: What are the benefits that you hope to get out of doing this?

And then assuming there are benefits, because if there aren't any benefits you might as well stop there, right? ... If you can't be sure that there are benefits, why are you doing it? But if there are benefits: Can you identify the costs and do the benefits outweigh the costs? Are the costs so high that you don't want to do what you're doing?

And we don't do that around policing. It's somewhat extraordinary. And so we're working very hard at the Policing Project to bring cost-benefit analysis to policing. We're doing cost-benefit studies of a number of policing practices including de-escalation training, pursuit policies, frequent traffic stops, and we are holding a convening in September of this year in which we're going to bring together all kinds of stakeholders—policing agencies, social scientists, civil libertarians, state and local government officials, journalists—to talk about how we start to infuse our decisions about policing with cost-benefit analysis.

Gene: Do you have any advice for policymakers across the country as they look into these issues?

Barry: Yes. I have two pieces of advice consistent with everything I've said here today. One is that they ought to ensure that the policing tactics and technologies that get adopted are done with public approval and with policies in place that reflect the public's wishes. And the second is that they ought to be doing this kind of cost-benefit analysis.

The two things come together very frequently around new policing technologies. You know, the fact is when you talk to police chiefs, they'll tell you that they're just swamped with choices about new technologies; they've got something being offered to them all the time, and they don't know what is the right thing to choose.

To address that, you've got to do a couple of things. One thing is you've got to do cost-benefit analysis. You've got to be able to say: What am I going to get out of this technology? Because some of these technologies cost a big bundle ... And can you get it in a different way, a cheaper way? Is some of your technology redundant? Are there privacy costs that are going to frustrate the public and can those be avoided? What does the public think?

And so I encourage lawmakers to get involved with these issues we traditionally just defer to the police. And I'm all for deferring to their expertise. Again, we work long and hard with policing officials every day. But we have a need in this country to engage the public on these very, very critical issues regarding our public safety.

Gene: Any final thoughts, Barry? Anything that we haven't covered today?

Barry: The thing about policing is that once the public gets engaged, I think they find it fascinating, as they should. It's a very crucial and very important and very interesting area. So I encourage that involvement. And I of course encourage everybody to go out and buy "Unwarranted" and read it.

Gene: OK. We've been talking with Barry Friedman, the author of that book, "Unwarranted: Policing without Permission." Barry is also a professor at the New York University School of Law. Thank you, Barry, for being a part of "Our American States."

Barry: Thank you, Gene.

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Gene: We're talking with Ron Serpas who is executive director of the Law Enforcement Leaders and a former police superintendent of New Orleans. He is a professor of practice at Loyola University's Criminal Justice Department in New Orleans. Ron, tell us about Law Enforcement Leaders and what the group is looking to accomplish.

Ron: Well, thank you for the opportunity to talk about what I believe is one of the most important law enforcement groups on the horizon these days. We formed in October of 2015 and we represent 200 current and former police chiefs at the federal, state and local level. We have members from all 50 states. And our position has been: We were part of the front line. These police chiefs and prosecutors were at the front line of working towards reducing crime over these last 30 years to historic lows. We're certainly aware that police didn't do this by themselves, but we also know we had a lot to do with it, we learned a lot, and now we see the world in a bit of a different view.

We believe strongly in a lot of the current criminal justice reform going on in as many as 30 of the states in the nation. We participate in helping to rally public support and political support for the notion that we can reduce crime and incarceration at the same time. As odd as that might sound to some people when 200 former police chiefs and prosecutors of all walks of life say that, we oftentimes get people's attention. So we do believe you can do both.

Gene: Chief, I know you are very familiar with a poll conducted about a year ago by the Charles Koch Institute and the Police Foundation that, and I'm generalizing here, that people believe interactions with police are getting worse, but not necessarily in their own communities. They're also concerned about the respect for citizens' rights.

As someone who is a respected member in the law enforcement community, what was your reaction to the results of this poll?

Ron: You know, every time I see a poll like that, it reminds me that American police officers are going to have to recognize, and we do recognize, that being in partnership with the community is how you solve crimes. You don't solve crimes in a vacuum. You don't solve crimes of murder, rape, robbery, burglary, assault if community persons don't feel comfortable coming forward.

So whether you approach this from the point of view of I think bad people and dangerous people should be put in jail, you can't do it without the public support.

But, you know, we oftentimes also get conflicting information. Just last week, the Department of Justice, Bureau of Justice statistics released its newest iteration of police and citizen contacts. It's a survey of over 70,000 people in the country 16 years and older, and it asks them about

their experience with the police. And I think it probably supports the Koch Industry work and the Police Foundation.

In pockets of America there is a dramatic ... I think that's not even too broad of a word ... there's a dramatic disconnect between the police and the community. However, across the country, and we're seeing more and more with this kind of research, that when police officers explain themselves, follow these ideas of justice and legitimacy, they oftentimes get incredibly high levels of support from people who have interacted with them, often in the terms of 80 to 90 percent satisfaction with the way the officer explained not taking enforcement action on a ticket, or gave a warning instead of a ticket.

When it comes to search and arrest, those numbers drop into the high 60s and low 50s, but that's where the issues are. How do we explain what we're doing with the public?

Gene: A lot of this really is trying to improve the relationships between the community and the law enforcement community as well.

Ron: Right. And one of the things that I think we don't talk enough about in the narrative that's being created around this idea of police reform—police reform is just that; it's police reform. But criminal justice reform can't just be about the police. It can't just be that the police are accepting a responsibility for history, accepting a responsibility for change. So we shouldn't allow the conversation to meld so much so that people believe or have reason to suspect: If we just had better police, then the criminal justice system would be whole. That's not the case.

We need to look at prosecution, we need to look at reform, reentry, rehabilitation, probation and parole to have a full criminal justice reform, and upwards of 27 states now have done something holistic like that and have seen crime go down.

Gene: And another part of this poll that I referenced earlier said that people would, in an ideal world, would like police to be a constant presence in the community to prevent crime compared to their current role of responding to crime when it happens. Given the resources that most departments have right now, how is it possible to address this public perception?

Ron: Well, that is the challenge of the day. In the post-2008-recession world it would be my prediction and experience supporting this prediction that our police departments are likely never to be as big as they were once before. Cities have recalculated themselves after the crisis of funding and just simply do not have the capacity to have that many officers on payroll ever again.

So as a result, we have to continue to find innovative ways to be what it is the public wants and serve them in a way that satisfies their desire to co-produce safety, and that's the issue with community policing – it's co-producing safety.

But I wanted to point out real quickly there was a study done in early 2017 that I think gives us all hope. In February 2017 the Urban Institute looked at six cities: Birmingham, Fort Worth, Gary, Minneapolis, Pittsburg, and Stockton. And in these cities they went to those neighborhoods where the clarity of the police miscommunications was there; that the police in those communities were not connecting. And that was one of the survey findings.

But this is the survey finding that's important: while the community didn't see the police exercising a lot of community policing, not exercising a lot of support, the perceptions of the residents were well over 70% that they think laws should be obeyed, that they think obeying the law does ultimately benefit everyone. And nearly 65 to 70% are willing to report crimes and suspicious activity.

To me that's a moment of hope because while the communities at risk are pointing out that there's a disconnect between them and the police, they are not disconnecting from the idea of law and order is what they want in their neighborhood too. We've got to find a way to close that gap. We have people who are willing; we have just got to find a way to close the gap.

Gene: And in that vein, I note that your organization has come up with four priority issues that I think kind of address this innovation that you were talking about earlier: one is strengthening community/law enforcement ties; second being reforming mandatory minimums; a third, restoring balance to criminal laws; and fourth, the increasing alternatives to arrest and prosecution, especially mental health and drug treatment.

Talk to us about these priorities and where you hope state legislators could make a difference in addressing these.

Ron: Well, I think crime is local and we need to continue to remember that, which means this is in the wheelhouse of state legislatures. And we've had tremendous success as a nation; far more so than the federal government, the states are actually leading the way on all four of these reforms. And let's talk about one that's the most crucial that does require an effective and active state legislative participation, and that is this.

When we look around the country where police officers are given alternatives to arrest for those people who are suffering from mental health, alcohol or drug addiction, or co-addicting behaviors, we see police officers take that alternative. They don't want to put the neighborhood person who is suffering from PTSD as a veteran, or the person who is suffering from alcohol or drug addiction because they have a mental health underlying condition; officers don't want to put those people in jail.

But it's up to our legislative bodies and our executive governments in the states to provide alternatives, to find sobering centers, find crisis response centers. Tucson, Arizona, Miami City, Miami Dade – you see examples throughout the country... Seattle – where when legislative bodies and the public give officers alternatives, they will use them and they will not put people in jail who really need the treatment of medical doctors and nurses and not the treatment of cops and jailers.

So that is in the wheelhouse of legislatures. Louisiana just had a very successful change in sentencing practices, rehabilitation practices, probation/parole. So really, it's to that main point again: reforming the police doesn't reform the system. Reforming the police reforms one wheel in the cog. We have to have these other reforms.

Gene: So Chief, what haven't I asked you about these issues that you think it's important for the public and state legislators to know about?

Ron: I think to the point of legislators, let this organization that I'm fortunate enough to represent and cofound... We bring a tremendous amount of credibility to the debate. We're talking about police chiefs from cities the size of New York to the size of Mayberry RFD; prosecutors, and we sit down with legislators privately and publicly and say: there is political cover. This isn't a vote of soft-on-crime. It's a vote to give police officers alternatives, restore some balance to the laws, deal with this mandatory minimum sentencing that causes greater harm than good in many cases, give judges that discretion that they should have to determine sentencing.

And really you can wrap it all up in one clear sentence: The police have altered much of their behavior over the last 30 years in many ways, some successful, some not as successful as we want. We've got to keep legislation up with those changes of expectations of the community, expectations of what the police can really do, and let's put the half of the people who are in prisons and jails in this country that have mental health problems, let's put them in mental health facilities, not jail facilities.

Gene: Well, thank you Chief for providing your time and insight to these issues. If people want more information, where would you direct them?

Ron: You can find us at lawenforcementleaders.org and we're on the Internet at that location, and we are more than happy to discuss these issues with anyone who wants to go through some of the details we've uncovered over the last nearly three years.

Gene: We've been talking with Ron Serpas, who is the Executive Director of Law Enforcement Leaders. Ron, thank you so much for your time today.

Ron: Thank you very much, Gene.

Music and Gene VO:

And that concludes this edition of "Our American States." We invite you to subscribe to this podcast on iTunes and Google Play. Until our next episode, this is Gene Rose for the National Conference of State Legislatures. Thanks for listening.