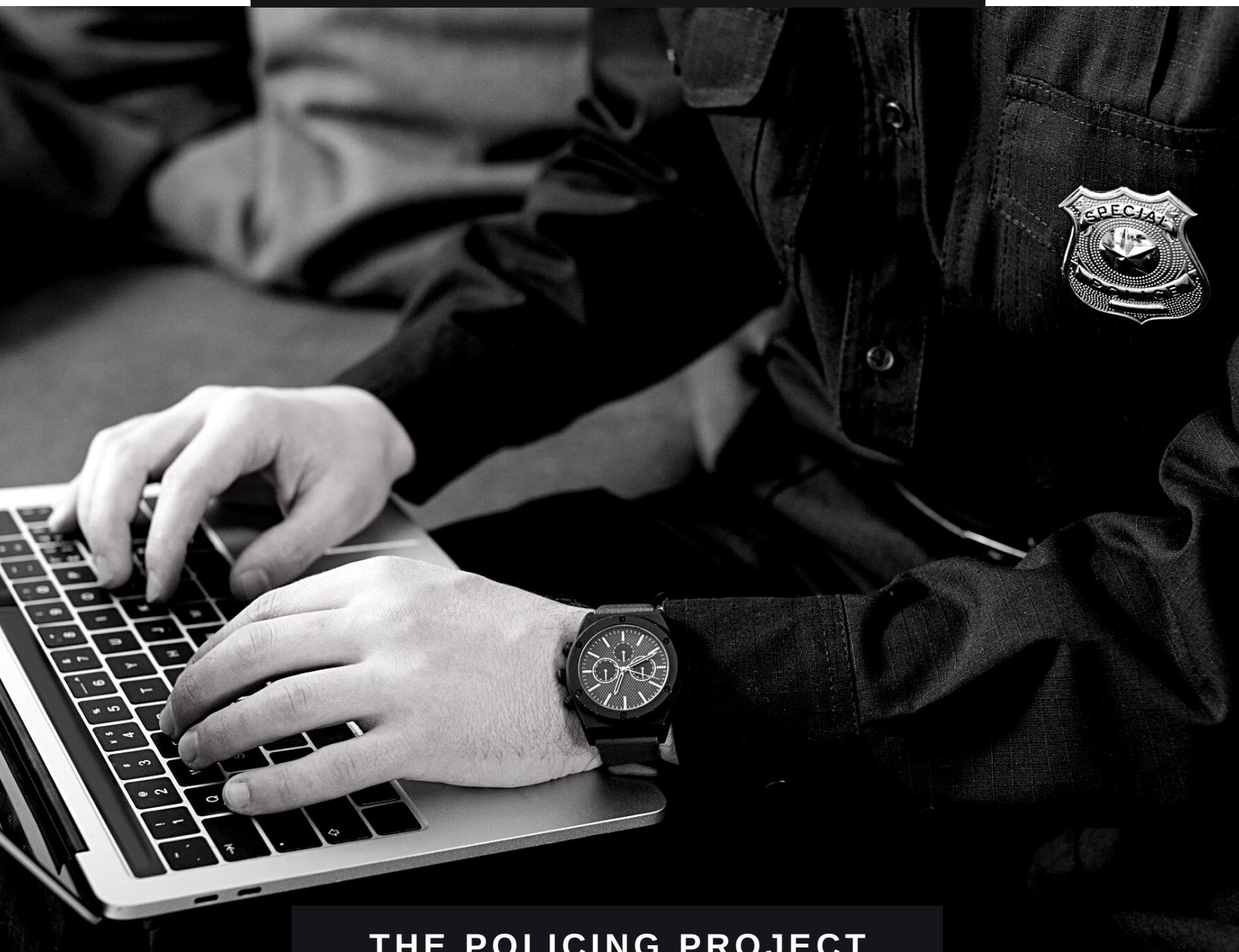TUESDAY, DECEMBER 8, 2020

CONVERSATIONS ON POLICING TECH:
SOCIAL MEDIA MONITORING

2020-2021 SALON SERIES

THE POLICING PROJECT

About the Policing Project Salon Series

As part of our ongoing work to help promote the ethical use of policing technology, the Policing Project is hosting a series of closed-door salons to work through some of the most difficult questions we face. Made possible through support from Microsoft, the salons enable us to vet our projects and discuss pressing issues around law enforcement's use of technologies with a diverse set of experts, including privacy advocates, technology vendors, police chiefs, academics, legal experts, community leaders, and government officials.

About the Policing Project

We partner with communities and police to promote public safety through transparency, equity and democratic engagement.

Our work focuses on front-end, or democratic, accountability — meaning the public has a voice in setting transparent, ethical, and effective policing policies and practices before the police or government act. The goal is to achieve public safety in a manner that is equitable, non-discriminatory, and respectful of public values.

For more information, visit **www.PolicingProject.org**

The report was written by Policing Project Staff Attorney Katie Kinsey.

Event Description and Review

When it first emerged, social media mainly served as a way to share our daily experiences and rediscover erstwhile friends. Fast forward, and social media platforms have transformed our private and public lives. Today, over half of Americans get their news from social media. During the pandemic, these platforms provided some of the only safe means of human connection.

As social media use has grown in both scale and scope, it is no surprise that its broad capabilities have caught the attention of law enforcement. Across the nation, policing agencies now use social media for a variety of purposes—from general community outreach to information gathering about criminal activity. But despite widespread law enforcement monitoring of social media to prevent and investigate crime, there are few guardrails in place to ensure this use is responsible and respects the public's civil rights and civil liberties.

As part of our tech salon series, **Policing Project Executive Director Farhang Heydari** partnered with **Rachel Levinson-Waldman** and **Ángel Díaz of the Brennan Center for Justice's Liberty & National Security Program** to bring together a diverse set of stakeholders for a discussion around how best to regulate law enforcement use of social media for criminal investigations, public safety, and surveillance.

Discussion Overview

The salon kicked off by asking law enforcement attendees to describe their use of social media in criminal investigations. Several representatives stressed the utility that social media monitoring provides for investigating serious crimes that may require proving associations between individuals and a criminal enterprise, such as gang-related crimes, sex trafficking, and child exploitation. They explained that for these types of crimes monitoring social media posts and developing covert or fake accounts can be particularly helpful tools for discovering and establishing evidence of association between individuals and potential criminal activity. One law enforcement official who oversees his agency's violent crime division highlighted that social media monitoring is especially helpful in investigating gang activity as it allows officers to track online disagreements before they escalate into real-world violence.

The discussion then pivoted to the concerns raised by law enforcement's monitoring of social media for gang-related activity. Many participants took issue with the premise that monitoring online expression was an effective way to determine gang affiliation. As one scholar noted, research around interpreting social media posts shows that the actual meaning and intent behind the content in a person's posts is not easily decipherable even by people who live in the same communities or engage in the same social circles. Significant doubt was expressed about law enforcement's ability to distinguish posturing from actual expressions of gang affiliation. From the public defense side, one participant shared that she has represented teenage clients who were subject to SWAT raids after law enforcement observed Instagram or Facebook posts where they were posturing with fake guns or money.

As several participants pointed out, the harms of misinterpretation in this context are especially acute when law enforcement uses social media information as the basis for entering someone in a gang database. Being tagged in a gang database can subject an individual to a host of negative consequences, from heightened police surveillance to (in some jurisdictions) having this information shared with employers or landlords, and research has shown that gang databases often disproportionately target youth of color. Recognizing these concerns, law enforcement representatives emphasized the need to corroborate information from social media with real-life sources and to establish strict due process requirements for using social media information in connection with gang databases.

Another commonly shared concern was the lack of information and transparency around law enforcement's use of social media monitoring. There was consensus that auditing the efficacy or disparate impact of these practices would be essential for informing responsive legislation. Yet currently, auditing is nonexistent. Legislators are not the only people who lack information necessary to engage in effective oversight: law enforcement representatives flagged that supervisors often struggle to access comprehensive information about the nature of their line officers' use of these tools. One supervising officer noted that young officers especially gravitate toward these tools in their investigative work and emphasized the need for procedures to ensure that there is real managerial oversight over this use.

Turning to the issue of guardrails, the discussion focused on two key topics: (1) the role that tech companies that run these platforms should play in restricting law enforcement use; and

(2) the special need for restrictions on law enforcement's use of fake or covert accounts. Regarding private companies, several participants urged that these platforms have a responsibility to close loopholes and enforce restrictions in their terms of service that prohibit law enforcement from monitoring platform users. Although tech representatives acknowledged there is room for improvement, they emphasized the need for comprehensive and meaningful government regulation in this space. As one tech representative pointed out, a company can have a policy against fake accounts, but if a policing agency is developing realistic fake personas, it will be next to impossible for the tech company to root out this use.

In discussing covert accounts, there was agreement that significant risks were posed by these potentially invasive uses of social media. Yet consensus was lacking on the best way to mitigate these risks. Most participants did not favor a complete ban on the use of covert accounts—with more crime originating on the internet, many acknowledged these accounts could be necessary investigative recourses in some cases. Some favored imposing a warrant requirement, but several law enforcement attendees worried about warrants unnecessarily impeding investigations and instead favored requiring only supervisory approval.

By the end of the discussion, disagreement on where and how exactly to draw the lines on regulating law enforcement monitoring of social media persisted, but consensus had emerged that leaving this area unregulated was not the answer.

List of Attendees

Abed Ayoub

National Legal & Policy Director, American-Arab Anti-Discrimination Committee

Sam Biddle

Technology Reporter, The Intercept

Danielle Citron

Austin B. Fletcher Professor of Law, Boston University School of Law

Victor Dempsey

Community Organizer, Community Justice Unit, The Legal Aid Society

Ángel Díaz

Counsel, Liberty & National Security, Brennan Center for Justice

Lauren Dollar

Juvenile Defense Attorney, Office of the Public Defender Maryland

Barry Friedman

Jacob D. Fuchsberg Professor of Law, and Faculty Director, Policing Project, NYU School of Law

Sue Glueck

Senior Director of Academic Relations, Microsoft

Robyn Greene

Privacy Policy Manager, Facebook

Neema Guliani

Head of National Security, Democracy, & Civil Rights Public Policy, Americas, Twitter

Farhang Heydari

Executive Director, Policing Project, NYU School of Law

Mecole Jordan-McBride

Advocacy Director, Policing Project, NYU School of Law

Maira Khwaja

Outreach and Development, Invisible Institute

Rachel Levinson-Waldman

Deputy Director, Liberty & National Security Program, Brennan Center for Justice

Taryn Merkl

Senior Counsel, Law Enforcement Leaders Initiative and Justice Program, Brennan Center for Justice

Christopher Ortiz

Deputy Chief, Glen Cove Police Department

Faiza Patel

Director, Liberty & National Security, Brennan Center for Justice

Desmond Patton

Associate Dean of Curriculum Innovation & Academic Affairs, Columbia School of Social Work

Kirby Plessas

Founder and CEO, Plessas Experts Network

Ananya Roy

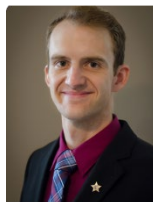*Member, Youth Justice Board,* Center for Court Innovation

Michael Silva

Assistant Chief of Police, Tucson Police Department

Forrest Stuart

Director, Ethnography Lab, Stanford School of Humanities and Sciences

Chase Wetherington

Detective, Hillsborough County Sheriff's Office