

FRIDAY, OCTOBER 18, 2019

# CONVERSATIONS ON POLICING TECH: LEGISLATIVE REGULATION OF POLICING TECHNOLOGY

FALL 2019 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 law 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](http://www.PolicingProject.org)

*Pictured on the cover: (top from left) Dana Rivera, Emmanuel Mauleon, Thomas Taffe, Catherine Crump (bottom from left) Chad Marlow, Ginger Armbruster*

**The report was written by Policing Project Technology Fellow Emmanuel Mauleon.**

# EVENT DESCRIPTION AND REVIEW

Many communities around the country are expressing their desire not only to understand whether their police departments are employing various policing technologies—from body cameras to cell-site simulators to facial recognition—but to have meaningful input into how these technologies are acquired and used. Last month, as part of our Salon Series, the Policing Project invited a group of experts from various backgrounds, including privacy advocates, technology vendors, police chiefs, academics, and city government officials, to discuss the successes and lessons learned from one approach to regulating policing technologies—the **ACLU’s Community Control Over Police Surveillance (CCOPS)** model statute.

We report on our discussion below, but here are the important takeaways:

- Transparency around the use by law enforcement of information-gathering technologies is essential to maintain community trust.
- Any legal requirements for transparency must respect both the compliance burdens placed on government, as well as legitimate concerns—limited though they may be—about the need for secrecy to assure public safety.
- Vendors should not be allowed to require law enforcement agencies to adhere to non-disclosure agreements on their uses of policing technologies.

CCOPS was drafted nearly four years ago, and since has been enacted in one form or another by thirteen different jurisdictions. It is intended as a guiding framework to bring transparency and front-end accountability to the acquisition and use of new information gathering technologies by law enforcement, as well as to evaluate existing uses of police technology. The Policing Project followed CCOPS with our own model legislation, the Authorized Police Technologies (APT) Act. Our hope was to streamline some of the more onerous reporting requirements in CCOPS, in order to encourage broad adoption of the statute. We also prepared another version, the Authorized Databases and Police Technology (ADAPT) Act, which regulated the use of policing databases along with policing technologies.

The conversation began with a discussion of what it is about law enforcement’s use of information-gathering technology is necessary for communities to feel informed and able to engage in oversight. There was consensus that it was less necessary to know every single detail about a piece of technology, including make, model, or software versions. Instead, it is valuable to learn what a particular technology costs, what its capabilities are, how it will be used and how often, and what sort of impact it has on law enforcement effectiveness. Most important of all is an understanding of any negative consequences on the communities in which it is deployed, especially communities of color and other communities that bear the brunt of many law enforcement efforts.



Ángel Díaz, Brennan Center for Justice and Albert Cahn, Surveillance Technology Oversight Project (STOP).



ShotSpotter CEO Ralph Clark and Tucson Police Chief Chris Magnus.



Kelcey Duggan, Community Resource Hub for Safety and Accountability and Faiza Patel, Brennan Center for Justice.



Harlan Yu, Executive Director of Upturn and Chris Magnus.

Much of the discussion centered on compliance challenges around statutes modeled on CCOPS. Because of the anticipated burden, among other things, one jurisdiction eliminated several of CCOPS' reporting requirements altogether, circumventing one of the primary goals of the model statute. Our own investigation revealed that while other jurisdictions adopted the reporting requirements, they either were not in compliance, or were relying on boilerplate language in an attempt to meet reporting requirements.

On the other hand, it was noted that, even if there is not perfect compliance with reporting requirements, much of the value from CCOPS comes from creating a "friction point" that requires policing agencies to slow down and articulate their reasoning for acquiring new technologies. Some law enforcement representatives reminded us, however, that in many smaller jurisdictions it is the police—not the community—that actually have the highest reservations against adopting new technologies. They stressed that an adversarial acquisition process may not translate well to jurisdictions that already have immense trust in law enforcement and press the police to acquire more techniques and technologies to keep the community safe.

There was consensus that in order for genuine transparency and accountability, there is a need to educate communities about the capabilities of these technologies. Some participants expressed the view that not only do too many reporting requirements make it very burdensome for jurisdictions to comply with statutes modeled on CCOPS, but that too much information actually can become a barrier to public understanding of the most significant issues surrounding police information-gathering technology.

The group also discussed the role that technology vendors can play in ensuring transparency. There was general agreement that vendors never should be allowed to require law enforcement agencies to sign



Michael Simon, Co-founder and CEO of Eludc, and Policing Project Fellow Julian Clark.

non-disclosure agreements in order to use their technologies. To the extent technology is used to gather information on the public, and especially if that information then will be used in criminal proceedings against individuals, there is a right to know about and understand the technology. Additionally, there was consensus that at least some of the barriers to transparency stemmed from the design of the technologies used by police, which cannot at present easily produce the kind of data that is required by CCOPS. The group believed it would be mutually beneficial for vendors to build default transparency tools into their products—both to help departments comply with these statutes, as well as to assist vendors that must adjust their products continuously as more jurisdictions adopt transparency regulations.

Although participants identified several barriers to implementing these statutes, including a method of preserving policing secrecy where it truly is needed, and the burden of compliance, or simply political will, they all agreed that these issues could be overcome. One law enforcement executive underscored that once police internalize the idea that their greatest crime-fighting tool is not new technology, but community trust, fights over transparency give way to collaborative policing.

It also was noted that although the initial burden of implementing new use policies and reporting on policing technology might be great, subsequent updates should become easier over time.

Although we do not purport to have solved or even addressed all of the issues and challenges inherent in attempting to enact and comply with CCOPS or the APT and ADAPT Acts, the Salon mirrored one of the goals of such legislation: sparking a conversation between different stakeholders about how law enforcement uses information-gathering technology, talking through the benefits and costs of such technology, and figuring out how to best keep people safe, informed, and empowered in the policing of their own communities.

# ATTENDEES

**Ginger Armbruster**, *Chief Privacy Officer*, Seattle Information Technology, City of Seattle

**Albert Fox Cahn**, *Executive Director*, Surveillance Technology Oversight Project (STOP)

**Ralph Clark**, *President and CEO*, ShotSpotter, Inc.

**Catherine Crump**, *Assistant Clinical Professor and Director*, Samuelson Clinic for Law, Technology & Public Policy, University of California Berkeley School of Law

**Ángel Díaz**, *Counsel*, Liberty & National Security Program, Brennan Center for Justice

**Kelcey Duggan**, *Research and Policy Associate*, Community Resource Hub for Safety & Accountability

**Andrew Ferguson**, *Professor of Law*, University of the District of Columbia David A. Clarke School of Law

**Barry Friedman**, *Jacob D. Fuchsberg Professor of Law and Affiliated Professor of Politics*, and *Faculty Director*, Policing Project at New York University School of Law

**Farhang Heydari**, *Executive Director*, Policing Project at New York University School of Law

**Nicole Karlebach**, *Global Head*, Business & Human Rights, Verizon

**Faiza Patel**, *Co-Director*, Liberty & National Security Program, Brennan Center for Justice

**Laura Popa**, *Deputy Chief of Staff for Legislation and Policy*, New York City Council

**Chris Magnus**, *Chief of Police*, Tucson Police Department

**Chad Marlow**, *Senior Advocacy and Policy Counsel*, ACLU

**Dana Rivera**, *Public Policy Manager*, Amazon Web Services

**Michael Simon**, *Co-founder and CEO*, Elud

**Thomas Taffe**, *Deputy Chief*, Office of the Police Commissioner, New York City Police Department

**Jefrey Velasquez**, *Legislative Director*, New York City Council

**Harlan Yu**, *Executive Director*, Upturn

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