

Statement to the Presidential Task Force on 21<sup>st</sup> Century Policing, February 24, 2015

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### **Reducing Deadly Force in US Policing: A View From England and Wales<sup>1</sup>**

The FBI reports that, in 2013, at least 461 people were killed by US police in *justifiable* homicides. Estimates from news media reports suggest the number was over 1,000.<sup>2</sup> In the same time period, a comprehensive count in England and Wales by its Independent Police Complaints Commission reported that the number of people killed by police in 2013 was zero.<sup>3</sup> The FBI reports that 27 US police were victims of homicide in the line of duty in 2013; the number of homicides against police officers in England and Wales that year was one.<sup>4</sup>

The vast US-UK difference in deadly force by and against police was not due to a lack of confrontations in which police had legal powers to kill. In London alone in 2012, police sent authorized firearms officers to 2,451 incidents, including 634 direct threats to life, and seized 416 firearms.<sup>5</sup> The reason London's police killed no one in these events is the result of an infrastructure of institutions and policies that is completely lacking in US policing.

This infrastructure operates *not* at a nation-state level (equivalent to the US federal government), but at the level of one of three state-like entities within the UK: Northern Ireland, Scotland, and England & Wales (E&W). Much like a US state, E&W has numerous locally-controlled police agencies of different sizes. Since 2012, 42 out of its 43 local agencies have been governed by an elected Police and Crime Commissioner (PCC). Each PCC can allocate resources and set locally-driven priorities. But they are all required to meet standards set and monitored by the E&W infrastructure. This infrastructure is described here as a model for possible translation to *state* government in the US, although with support from the national level, which in England includes a cabinet Minister called the "Home Secretary," whose closest American equivalent is the Attorney General of the United States.

The infrastructure of policing in the "state" of England and Wales that helps to maintain low levels of deadly force and high levels of police legitimacy includes the following:

- An Inspectorate of Constabulary, established in 1856 (<http://www.justiceinspectrates.gov.uk/hmic/>), with authority to audit all aspects of all police departments at any time, much like the new independent Office of Inspector General for the New York City Police Department.<sup>6</sup>
- A system that selects, trains and certifies potential police chiefs (and assistant and deputy chiefs) before any English or Welsh police agency can appoint a chief officer.
- Legally mandatory "state" standards for police practices, including the Code of Ethics (<http://www.college.police.uk/What-we-do/Standards/Pages/standards-guidance.aspx>).

- A mandatory standard of extreme restraint in the use of deadly force, requiring proportionality in relation to the underlying purpose of using force. (<https://www.app.college.police.uk/app-content/armed-policing/armed-deployment/discharge-of-firearms/>)
- An Independent Police Complaints Commission, which can investigate any complaint against police of any police agency in England and Wales. (<https://www.ipcc.gov.uk/>)
- A register of police officers who have been dismissed from one police force and cannot be hired by any other police force in England and Wales (<http://www.college.police.uk/What-we-do/Ethics/Pages/Integrity-in-policing.aspx> ).
- A minimum size of each local police agency of no less than 1000 employees.

This infrastructure is designed for a different system of government, but they provide rich food for thought about the US federal system, in which local police agencies and cities are legally a creation of strong states, with a minimal federal role. My testimony to this Presidential Task Force therefore translates the England-Wales police infrastructure into specific recommendations for each of the US Constitutional levels of government.

### **Recommendations for States.**

1. **Inspector General of Police (IGP).** Each U.S. State should establish an office of Inspector General of Police, appointed by the Governor to serve a five-year term, empowered to visit, observe, review records, interview and audit all state, county and municipal police agencies Sheriff's Offices in the jurisdiction, issuing public reports on the degree to which each agency meets the standards required by the state's peace officer standards and training (POST) Boards. The IGP should also have the power the English Inspector had until recently to de-certify any police agency as failing to meet minimum standards of performance.
2. **Certification of Police Agencies.** Each state should require each police department in the state to be certified on the basis of a five-year IGP inspection. The IGP would also have the power to de-certify any police agency, at any time, on grounds of failing to meet minimum standards of performance, with its duties taken over by a county-wide or state-wide agency until such time as certification can be restored.
3. **Certification of Police Chief Executives.** Each state should establish a mechanism for certifying chief police executives (including sheriffs and commissioners), plus their deputy and assistant chief executives. If the US establishes a National Police College to train and examine candidates for certification (see point 8 below), states should adopt that method of certification as a means of strengthening a national police profession. States should also require continuing professional development of certified police executives, in order to maintain certification on the basis of a professional review every three years.
4. **Mandatory Standards.** Each state should empower (or in a few cases create) a peace officer standards and training (POST) board to set standards of police conduct,

procedures and ethics, based on research evidence on what works best to serve the public interest. These POST boards should (continue to) consist primarily of professionally certified chief police executives, appointed by the Governor. Each state board should be funded to operate a research arm to review and generate research that bears directly on producing best outcomes for legitimacy and public safety. The standards they set should include things police agencies and officers must and must not do, in recruitment, selection, training, appointment, promotion, crime analysis, strategic planning, supervision, discipline, evidence collection, use of video monitors and body-worn cameras and other technologies as they evolve. The standards must be announced with public consultation to assure transparency and due notice of the basis of all IGP inspections.

5. **Register of Dismissed Officers.** All states should follow the example of both Florida and England in establishing a register of all police officers who have ever been dismissed, who would be barred by law from ever being appointed a police officer in that state. If the Federal government elects to establish a national compilation of state and federal registers of dismissed officers, each state should contribute its list to the federal body for access strictly limited to policing agencies screening applicants for police officer posts.
6. **Independent Police Complaints Commission.** Each state should establish and fund a state-wide body to investigate complaints against police officers or agencies, allowing all agencies in the state to refer complaints to that body while requiring them to post the phone numbers, website or addresses to which complaints may be made. Members and a chair of the Commission should be appointed by the Governor to serve staggered terms extending beyond election years. State law should require that Commissions receive adequate funding to review, investigate, refer to prosecution, close or seek reconciliation of each complaint. The Commission should also have the power to dismiss a police officer from the profession, on the grounds of a serious breach of ethical standards set by the POST Board, even without regard to prosecution or conviction of a crime. Such dismissals would, by statute, take immediate effect, even pending any judicial review.
7. **Minimum Size of Police Agencies.** Whereas so many problems of organizational quality control are made worse by the tiny size of most local police agencies in the US; whereas less than 1 percent of 17,985 US police agencies meet the English minimum of 1,000 employees or more; whereas 73% of all US police agencies employed fewer than 25 people in 2008;<sup>7</sup> therefore each state should establish a minimum requirement of 100 full-time equivalent employees in order for a state, county or local police agency to obtain or retain certification. Police agencies that fail to meet this standard upon its adoption should be given five years to arrange for a transition to mergers or substitution of police agencies in local jurisdictions so that all agencies can be large enough to assure quality control, merit-based appointments and promotions, and equal treatment of all citizens under a rule of law.

## Recommendations for Federal Government

- 8. National College of Policing.** By executive order, the President of the United States (POTUS) should create a National College of Policing, empowered to accept fees for service paid by police agencies or individuals, that would train and assess experienced police professionals who meet admissions standards set by the Attorney General of the United States, who would also appoint the Board of Trustees of the College who would in turn appoint its Dean and faculty. The College would initially admit qualified applicants to a three-month residential course for potential police executives, concluding in an assessment center and examination that would certify qualified graduates to serve as chief police executives anywhere in the US. In the first five years after its creation, the National College of Policing (NCP) would allow all currently serving police executives in agencies of over 1000 employees to gain certification by assessment center only, without completing the course of study. The NCP would be required to include in its curriculum the major research evidence recommended by the National Institute of Justice as essential knowledge for preventing crime and maintaining the legitimacy of police institutions in a wide diversity of communities.
- 9. National Standards.** The NCP would also compile, publish and review standards for policing set by POST boards around the US, with an advisory board appointed by the Dean to select those standards endorsed by the NCP as *recommended* national standards. To the extent possible, these standards should be consistent with research evidence as summarized by the National Institute of Justice, even when the evidence may contradict state procedural laws.
- 10. Executive Order on Deadly Force.** The POTUS should issue an executive order to all federal law enforcement agencies requiring a British-style proportionality and de-escalation standard for the use of deadly force.<sup>8</sup> The standard would not replace existing statutory or case law. It would impose a standard of care before entering into direct confrontation with suspects. The two-part standard would stress **proportionality** (in situations in which there is a clear risk that use of deadly force might become necessary, but in which deadly force would be disproportionately severe in relation to the reason for engagement, the officer should avoid a confrontation when it is possible to do so without posing an immediate and threat to life or limb) and **de-escalation** (even in situations where a suspect has caused serious harm or death, where possible, police should attempt to negotiate a voluntary surrender rather than forcing an avoidable lethal confrontation). This order would be directly responsive to a wide range of recent cases in which police were legally justified in killing citizens, but where the underlying causes of the confrontation were a) so minor, or b) offered alternatives to immediate confrontation, that the deaths shocked the conscience of the community and nation.
- 11. National Registry of Dismissed Officers.** The POTUS should issue an executive order for the Attorney General to establish and maintain a national registry of names and identification of persons dismissed for cause from the ranks of 120,000 federal law

enforcement officials who work for the 73 federal law enforcement agencies.<sup>9</sup> This registry should be accessible *only* to federal, state and local police agencies conducting background investigations prior to hiring police officers. The POTUS should also order that the Attorney General regularly obtain any and all state lists of police officers dismissed for cause, adding those names to the National Register. Finally, the POTUS should direct that the Attorney General invest in improving ways to identify individuals with the same names and other identifiers, so that the unique identity of each dismissed person can be reliably established.

**12. Federal Funding Restriction.** The POTUS should direct that decisions on discretionary federal grants give preference to police agencies that adopt recommendations 13-16.

### **Recommendations for Local Governments**

**13. Standards on Deadly Force.** Each county or municipal government maintaining a police force should direct that organization to adopt Recommendation 10 above, the executive order on deadly force.

**14. Certified Police Chiefs.** Each county or municipal government maintaining a police force should adopt statutes restricting appointment and retention of chief executive officers to persons who have been certified as qualified police executives by the National College of Policing.

**15. National registry of dismissed officers.** Each county or municipal government maintaining a police force should adopt statutes requiring that organization to report the name and identification of each person dismissed from police service for cause to a local registry it will make available *only* to state, federal and local police agencies conducting background investigations prior to hiring police officers, or to a state or national registry that will make the names and identifiers equally accessible for the *sole purpose* of pre-employment screening of law enforcement candidates.

**16. Merge local police forces.** Each county or municipal government should cooperate at a county or regional level to create police agencies with a minimum of 100 fulltime employees per force as soon as possible.

These recommendations are offered in the spirit of the global movement for evidence-based policing in free societies.<sup>10</sup> We still need much more evidence about policing within the US to improve it. Cross-national comparisons are always limited by other factors. Yet Britain does offer evidence of a society that has more violent events per capita than the US, according to victimization surveys,<sup>11</sup> while policing itself with far less deadly force than in the US. If any of the recommendations above are adopted, they should be evaluated with the best research designs possible. But as a source of good ideas to test *selectively* in American policing, the best evidence suggests that our best bet is to consider ideas from policing in England and Wales.

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<sup>2</sup> <http://fivethirtyeight.com/datalab/another-much-higher-count-of-police-homicides/>

<sup>3</sup> Deaths During or Following Police Contact 2012-13 and 2013-14  
[https://www.ipcc.gov.uk/sites/default/files/Documents/research\\_stats/Deaths\\_Report2012-13.pdf](https://www.ipcc.gov.uk/sites/default/files/Documents/research_stats/Deaths_Report2012-13.pdf)  
and  
[https://www.ipcc.gov.uk/sites/default/files/Documents/research\\_stats/Deaths\\_Report2012-13.pdf](https://www.ipcc.gov.uk/sites/default/files/Documents/research_stats/Deaths_Report2012-13.pdf)

<sup>4</sup> <http://www.fbi.gov/about-us/cjis/ucr/leoka/2013>

<sup>5</sup> Statement of Martin Hewitt on behalf of the Commissioner of Police of the Metropolis to the Inquest Into the Death of Mark Duggan, September 6, 2013.

<sup>6</sup> Created by Public Law 70 in 2013. <http://www.nyc.gov/html/oignypd/pages/home/home.shtml>

<sup>7</sup> Census of State and Local Law Enforcement Agencies, 2008  
<http://www.bjs.gov/content/pub/pdf/cslea08.pdf>

<sup>8</sup> The extent to which this recommendation, or any of my 16 proposals, has been tested is limited. The evidence on macro-level structures is always less accessible than it is on micro-level changes. But a new policy restricting police use of deadly force has been repeatedly shown to be followed by substantial reductions in such deaths, at least in the short run. Level 2 evaluations on the Maryland Scale of Scientific Methods (Sherman, et al, PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING. Report to the Congress by the US Attorney General, 1997) consistently show reductions in killings by police in New York, Kansas City (MO), Atlanta (GA), and the entire US. See Fyfe, James Joseph. *Shots fired: An examination of New York City police firearms discharges*. No. 78-14335 UMI. State University of New York at Albany, School of Criminal Justice., 1978.; Lawrence W. Sherman, "Reducing Police Gun Use: Critical Events, Administrative Policy and Organizational Change," pp. 98-125 in Maurice Punch, Ed., *Control in the Police Organization*. Cambridge, Massachusetts: M.I.T. Press 1983. [Cited by the U.S. Supreme Court in *Tennessee V. Garner*, 1985.; Abraham N. Tennenbaum, "The Influence of the Garner Decision on Police Use of Deadly Force" *Journal of Criminal Law and Criminology* 85 at 241. For evidence that racial disparity declined from a decade of increasing restrictions on police deadly force policies in the 1970s, see National Urban League: *The Role of Race and Ethnicity in Police Use of Deadly Force* (1983).

<sup>9</sup> Census of Federal Law Enforcement Agencies 2008,  
<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4372>

<sup>10</sup> The Society of Evidence-Based Policing has 2,000 members in over 30 countries, mostly police professionals, who are dedicated to the production and application of research to improve police practices. [www.sebp.police.uk](http://www.sebp.police.uk),

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[www.Cambridge-ebp.net](http://www.Cambridge-ebp.net) . See also L.W. Sherman, *Evidence-Based Policing*. Washington, DC: Police Foundation (1998) and L.W. Sherman, "The Rise of Evidence-Based Policing: Targeting, Testing and Tracking." *Crime and Justice* 42: 377-451.

<sup>11</sup> Franklin Zimring and Gordon Hawkins, *Crime is not the Problem*. NY: Oxford University Press (1997).