



Cops Need a Contract with Their Communities

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Contracts are vital when it comes to matters of greatest importance in our lives. Buying a home, leasing a car, entering into a business partnership or even entering into a marriage—all of these involve different types of contractual agreements. As an attorney, I am wary of handshake deals and those who shy away from “putting things in writing”. That weariness results from the fact that, in important matters, everyone involved needs to see what the terms are and eliminate the possibility that disaster results from different parties to the agreement having their own incompatible ideas of what they agreed to in the first place.

In too many communities across the country, police officers are in desperate need of a contract with their community. What is expected of the police in these areas is impossible to know. Often times, agency policy does not match the rhetoric of elected officials or prominent community leaders. The agency policy may require a particular action, but that same action runs counter to the demands of a substantial, or at least vocal, part of the community. Following agency policy in such circumstances may run the risk of getting officers publicly vilified, fired or even criminally prosecuted. Elected officials and police leaders need to clarify the rules of engagement in accordance with community priorities so that the officers have a clear understanding of these rules of engagement—rules that are formalized into policy.

Officers in many parts of the country are exhausted by the mixed messages they often receive from elected officials and the communities that they serve. On the one hand, residents and business owners call the police for practically every problem that plagues their daily life—from noise complaints to disputes between neighbors to reports of intoxicated persons or homeless people sleeping in front of their place of business. They turn to their officers to “do something” in the face of these quality of life issues.

On the other hand, aggressive enforcement intended to prevent and detect criminal activity exponentially increases the frequency of enforcement contacts and, therefore, the likelihood of citations, arrests or use of force incidents that some in the community deem unreasonable or even terrorizing. Possibly most confusing is the fact that elected officials are blaming the police for upticks in crime while simultaneously blaming them for engaging in proactive policing that inevitably leads to more confrontational encounters.

It seems that the time has come for communities, through direct referendum or through their duly elected officials, to decide exactly what they want their police to do and not do. The rules of engagement need to be clarified for officers and the community. They need to be in writing. They need to be in policy. They need to be in a formal contractual agreement. And with a contract comes certain obligations on both sides. Officers are obligated to operate within the enforcement framework that is specified. Community members and the officials that they elect are obligated to live with the consequences of these rules, for better or for worse.

At this moment, when faced with unprecedented criticism from elected officials, public calls to “defund the police” and potential budget shortfalls in the wake of the COVID-19 pandemic, many law enforcement agencies must begin addressing the possibility that the pro-active model that has been pursued for a generation will, *in some communities*, be fundamentally changed in favor of a new model. **This new model, if it reflects the will of the local community, may involve prioritizing strategic responses to violent crimes while de-emphasizing traffic enforcement, officer responses to misdemeanor crimes and other activities under the umbrella of the “broken windows” theory of policing.**

This new approach will mean first and foremost that the rules of engagement for officers on patrol will be clearly defined and that communities choosing a more reactive and restrained model are required to accept the outcomes that result. It is not sustainable to require officers to be all things to all people, answering all manner of calls for service coupled by the standard of conduct that renders termination, public harassment or criminal conviction all too likely. **Policies must clearly define what is and what is not a police matter, as defined by the citizens in the community.**

Pursuing a new model that turns more decision-making over to residents will also mean that *different communities with different priorities will see substantially different levels of police intervention and activity*. Some communities will demand pro-active policing and it will be the responsibility of their police departments to oblige. Other communities will demand decreases in traffic stops, use of force and arrests. In

these particular communities, the pro-active policing model is not community policing. **This model expressly allows for the possibility that the community will want the police to do less in many areas of operation—not just what should they be doing but what should they not be doing.**

Many law enforcement professionals will argue that a more reactive “hands off” approach results in more innocent men, women and children being victimized by crime and fewer criminals being successfully prosecuted. And there is a litany of case studies that support their argument that a more reactive and restrained model of policing leads to increases in crime and disorder. But, again, as legitimate as these concerns may be, we must consider that no police agency can dictate to communities what is best for them. Police officers work for and are accountable to the public and they cannot make *their* priorities the community’s priorities.

Experts in America usually do not have complete authority to dictate policy that is in opposition to the will of the people. If that were the case, cigarettes and fatty foods and alcohol would be more intensely regulated or even outlawed on the advice of experts. Law enforcement is no different. **The police veterans may know what is best, but that is not how a democracy functions.** If we accept fundamental Peelian Principles on which modern policing was founded, we must accept that police legitimacy depends upon pursuing strategies that reflect the priorities of the community—even if the law enforcement professionals disagree with the wisdom of those priorities.

This approach is likely to be viewed by some as simply de-policing. But the key distinction is that de-policing is best understood as the informal and inconsistent cultural shift among patrol officers who choose not to engage in pro-active policing, while this new model is policy-driven and dictated by community policing principles. It is transparent and straightforward while de-policing is unspoken and veiled in plausible deniability for elected officials and police leaders.

In light of the recent public proclamations by some local political leaders and even law enforcement leaders, it seems clear that de-policing is going to take hold in cities across the country. Where this is the case, **rather than leaving officers to engage in discretionary de-policing, there is an ethical obligation to formalize operational changes in policy for officers and citizens.** Officers are entitled to concrete guidance regarding the rules of engagement and citizens are entitled to know what police leaders will and will not direct their officers to do in their official capacity.

When the COVID-19 pandemic first broke, many agencies effectively communicated to the public what normal operations they would engage in and those in which they would not. Minor traffic violations, misdemeanors and property crimes would not be enforced due to fear of contagion. This has provided a model for communicating a more restrained and reactive approach to policing—not dictated by a pandemic but dictated by the more fundamental Peelian Principle of police legitimacy in light of community priorities.

Passing by a porch where individuals are openly using marijuana was once considered an act of “hands off” de-policing. Now, in the many states where marijuana is legal, officers are actually prohibited under the law from taking investigative actions in such an instance absent circumstances indicating criminal activity independent of marijuana use. **When citizens’ priorities change, as evidenced by direct referendum or through their elected officials, law enforcement officers are obligated to make operational changes.** If a community’s priorities are to decrease arrests and enforcement actions in favor of focusing on violent crimes in progress, community policing principles dictate that agency strategies adapt.

Given the choice between informal de-policing and pro-active policing absent political and public support, this new model seems to present the feasible third option which is transparent and formalized into policy. Community support will only be sustained and improved if we are willing to consider a model that turns more policy-making authority over to the community to which the police are ultimately accountable. Community members and the officials that they elect are obligated to live with the outcomes, for better or for worse.

About the Author

Matt Dolan is a licensed attorney who specializes in training and advising public safety agencies in matters of legal liability. His training focuses on helping agency leaders create sound policies and procedures as a proactive means of minimizing their exposure to costly liability. A member of a law enforcement family dating back three generations, he serves as both Director and Public Safety Instructor with Dolan Consulting Group.

His training courses include [Recruiting and Hiring for Law Enforcement](#), [Confronting the Toxic Officer](#), [Performance Evaluations for Public Safety](#), [Making Discipline Stick®](#), and [Supervisor Liability for Public Safety](#).