

The BJA Executive Session on

# Police Leadership

2013

*The BJA Executive Session on Police Leadership* is a multi-year endeavor started in 2010 with the goal of developing innovative thinking that would help create police leaders uniquely qualified to meet the challenges of a changing public safety landscape.

In support of an integrated approach to creating safe and viable communities across America, the project directors recruited 20+ principals from a range of disciplines. The principals, in turn, led national field teams of practitioners focused on the work of policing and the organization of the future.

To gain new insights on leadership, the *BJA Executive Session on Police Leadership* engaged police chiefs in documenting their own paths and invited leaders to participate in various audio and video forums to tell their stories and discuss the future of policing and police leadership.

Please visit our website, <http://bjaleader.org>, to learn more about this project and to access a broad array of interactive, multimedia resources.

The principals are supported in their work by a team that includes project co-directors Darrel W. Stephens and Bill Geller, project strategist Nancy McKeon, and BJA Senior Policy Advisor Steve Edwards.

## Creative Problem-Solving and the Law: Challenges and Opportunities for Leaders of Police and Prosecution Organizations

### Introduction

by

Katherine Miller & Michael S. Scott

The BJA Executive Session on Police Leadership started from the position that public safety in the 21<sup>st</sup> century requires a new, broader delivery model with integrated problem-solving processes that cross governmental functions, break through longstanding professional boundaries, and include private-sector and community organizations. Within that context, the Executive Session launched an initiative called Creative Problem Solving and the Law to examine how police and prosecutors understand their core missions, how those core missions relate to the law, and how police and prosecutors relate to one another and to the community.

The principals who led this initiative—George Gascón and Michael Scott<sup>1</sup>—proceeded in their examination of police and prosecutor missions and relationships from the following proposition: Police agencies and prosecutor offices can and should work more proactively together to enhance sustainable communities in the 21<sup>st</sup> century. The organizations should redefine core functions in ways that promote:

- a problem orientation (rather than solely a case orientation),
- an approach to the law that enhances the legitimacy of the police and the criminal justice system in the public’s eyes,
- multidimensional collaborative approaches,
- innovative performance measures, and
- an effective leadership model.

Some police and prosecution leaders have realized that in order for both organizations to be effective and to be perceived as being fair, they need to move beyond the rote application of the criminal law in which the police and prosecutors merely collaborate to process cases through the courts. A new approach is needed because many pressing, longstanding community crime and disorder problems are inadequately addressed by the traditional criminal-justice assembly line that includes police arrests, case investigations, prosecutions, and sentences. Prosecutors and police need more, and more-effective, tools to better address public-safety problems and to help safeguard and strengthen the communities they serve.

The police profession over several decades has made some use of problem-oriented—as opposed to incident- or case-oriented—methods.<sup>2</sup> Even so, experts on the design and implementation of problem-oriented policing are frustrated by the profession’s overall track record in sustaining a problem-oriented approach to policing. Police leadership changes and fiscal constraints often lead to the abandonment of problem-oriented approaches in favor either of a return to conventional approaches or to more-limited innovative approaches.

For their part, prosecutors have been slower than police to adopt a problem-oriented approach to their business. The community prosecution movement, which began about two decades after the community policing movement, has touched only a relatively few prosecutors’ offices, and even there, usually in relatively small, pilot projects, rather than in more fundamental ways. However, innovations in prosecutorial services, such as commu-

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<sup>1</sup> George Gascón is the elected District Attorney of San Francisco. Before that he had a career as a police officer and police executive in Los Angeles; and chief of police in Mesa, Arizona and San Francisco. Michael Scott is the co-founder and director of the Center for Problem-Oriented Policing, a clearinghouse for information on problem-oriented policing and situational crime prevention. He served as a police officer in Madison, Wisconsin, in various police administrative positions in the New York City Fort Pierce, Florida, and St. Louis police departments, the founding chief of police in Lauderhill, Florida, a police researcher and consultant, and a clinical law professor at the University of Wisconsin.

<sup>2</sup> The Center for Problem-Oriented Policing website at [www.popcenter.org](http://www.popcenter.org) contains hundreds of case studies of effective problem-oriented policing and situational crime prevention initiatives undertaken in many police agencies.

nity prosecution, restorative justice, focused deterrence, problem-solving courts, and prisoner reentry programs can all be seen as important steps toward a problem-oriented criminal-justice system.

Developing creative, lawful, effective problem-solving methods is necessary to remediate the desperate conditions in which residents of many crime-plagued neighborhoods live. Not only have conventional criminal-justice system approaches largely failed to improve such conditions, in some ways they have contributed to making them even worse. Criminal-justice system agencies consume an enormous share of much-needed local government budgets that are thereby not available to improve the social and physical conditions in which crime and disorder are bred. And these expensive criminal-justice services have produced in America the highest incarceration rate per capita in the developed world, with 2.3 million people behind bars at any given time.<sup>3</sup> Moreover, impacts of these practices have not been evenly borne. In the quest to control crime, enormous numbers of people—particularly minority males—have been incarcerated, thereby devastating family structures, eroding the economic self-sufficiency and collective efficacy of communities that already faced significant challenges, and undermining the very legitimacy of the criminal-justice system.<sup>4</sup>

There is a growing body of reliable evidence that problem-oriented, collaborative, multi-dimensional approaches to addressing crime and disorder are both more effective and fairer than the conventional law-enforcement/punitive approach.<sup>5</sup> But without some fundamental rethinking of the core missions of police and prosecutors, and reorientation of their organizations, little of that promise will be realized.

In the three parts of this paper, the Problem Solving and the Law initiative team explored some of the key fundamental issues associated with reforming police and prosecutors' organizations from their conventional orientation to a new problem orientation. The three parts of the paper are intended to stimulate readers to think about, and try to resolve for themselves, these issues and, in turn, to encourage others within their organizations, professions, and communities, to do likewise. The three parts of the paper are:

- **Part I: Police Organizations.** In this Part, Michael Scott explores the police relationship to the law and to lawyers by considering police discretion and how it af-

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<sup>3</sup> Pew Center on the States. 2008. *One in 100: Behind Bars in America 2008*. Washington, D.C.: Pew Charitable Trusts. Beyond our high incarceration rate, America's punitiveness index—that is, the incarceration-to-offense ratio—quintupled from 1974 to 2007 (Kleiman, M. 2009. *When Brute Force Fails: How to Have Less Crime and Less Punishment*. Princeton: Princeton University Press, 14). More jails and prisons have been built while cutting back on rehabilitative opportunities for the individuals they hold. The same individuals cycle through the system at troubling rates, with little hope for change.

<sup>4</sup> Ruth, H., and K. Reitz. 2003. *The Challenge of Crime: Rethinking our Response*. Cambridge, Mass.: Harvard University Press; A. Braga, and D. Weisburd. 2010. *Policing Problem Places: Crime Hot Spots and Effective Prevention*. Oxford, U.K.: Oxford University Press, chapter 6.

<sup>5</sup> Skogan, W., and K. Frydl (eds.). 2004. *Fairness and Effectiveness in Policing: The Evidence*. Committee to Review Research on Police Policy and Practices. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, D.C.: The National Academies Press; Weisburd, D., C. Telep, J. Hinkle, and J. Eck. 2010. "Is Problem-Oriented Policing Effective in Reducing Crime and Disorder? Findings from a Campbell Collaboration Review." *Criminology & Public Policy* 9: 139-72.

- fects policing strategies and accountability. In particular, Scott considers the following questions: Should police exercise discretion in how they enforce the law? How should police choose from among strategic options? Who should police consult in weighing strategic options? How should police (including policymakers, commanders and officers) be held accountable for the strategic options they choose? What is the proper relationship between police and lawyers with whom they interact?
- ***Part II: Prosecution Organizations.*** In this Part, George Gascón, Katherine Miller, and Anne Tremblay describe the features of a multidimensional approach to the running of a prosecutors' office and how prosecutors' performance might properly be measured under such an approach. As prosecutors explain it, their traditional model has been one-dimensional and "enclosed"—cases were selected, prepared and tried within centrally located court buildings. "We whizzed by crime neighborhoods on the freeway home," one of the initiative team members observed at a project meeting. As the authors describe in this Part, all that is beginning to change as prosecution begins to move beyond case-orientation to a multidimensional, problem-solving approach to criminal justice. The authors describe innovations that are moving prosecutors out of downtown and into the neighborhoods where the people most affected by crime and the criminal justice system live, work, and recreate. These and other prosecutorial innovations together constitute a multidimensional approach to prosecution. This Part describes the content and benefits for community safety of problem-solving efforts, including prevention (educating potential victims and potential offenders about legal implications of crime); community prosecution; restorative justice; problem-solving/collaborative courts; recidivism reduction-based sentencing; and offender re-entry programs. It then examines how prosecutors' performance might be measured in novel and sensible ways that comport with a true multidimensional, problem-solving organization.
  - ***Part III: Police-Prosecutor Dialogues.*** In the engaging format of a quasi-fictional roundtable discussion, these police-prosecutor dialogues explore police and prosecutorial missions, professional discretion, and leadership responsibility. The characters engaged in the dialogues are fictional, but their opinions are based on interviews with real current and former police and prosecution leaders. The fictional participants in the dialogues include a professor who poses the dialogue questions, and a police captain, police lieutenant, deputy district attorney, and assistant district attorney who respond to them. The perspectives expressed are provocative and wide ranging. The four participants—two police and two prosecutors—represent either generally traditional or generally innovative perspectives, but with care not to make any of the fictional characters a caricature. Each practitioner responds to three basic questions that lie at the gateway to more creative problem solving. The questions call for reactions to new conceptions of police and prosecutor goals and roles, and to possible expanded working relationships between police and lawyers. The participants express divergent views on the respective roles of police and prosecutors in enforcing the law and providing for the

public's safety. They also address a final key question: Who should lead a multi-dimensional, multi-agency effort to enhance community safety in the 21st century? The intent of the Dialogues is to stimulate the reader—who likely is a leader-change agent in either the police or prosecution field—to assess how they would answer these questions and to compare their own views against those expressed in the Dialogues. Readers might even be inspired to lead a real-world discussion with their police and prosecution colleagues, considering these same questions.

As the three parts of this paper explore in detail, public safety in America in the 21st century requires a delivery model of broad local coalitions working together in new ways. The contribution of the Creative Problem Solving and the Law team is in capturing and illuminating ways that police and prosecutors—two key guardians of criminal justice—can work together in new, more effective, and more equitable ways.

This paper was developed by the “Creative Problem-Solving and the Law” initiative of the BJA Executive Session on Police Leadership. The initiative was led by principals of the Executive Session: George Gascón (District Attorney of San Francisco) and Michael S. Scott (University of Wisconsin Law School). Additional Contributors: Lenore Anderson, Jessica Flintoft, Wade Chow, Tara Anderson and Maria McKee, Interviewees for Police-Prosecutor Dialogue: Charles Ramsey, Rick Romley, Bruce Riordan and Jen Contini.

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