

REMARKS AT THE SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW AND SCHOOL OF MEDICINE SYMPOSIUM: THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING: PROCEDURAL JUSTICE, POLICING, AND PUBLIC HEALTH

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This symposium is really about challenges and finding the best ways to respond. Some challenges are unique to policing in the 21st century and others are unique to the medical field. However, our professions face many problems of identical origin. My hope is that through this exchange, facilitated by the Schools of Law and Medicine, we can help each other find the best responses.

Some of the most significant challenges that law enforcement officers face today are the result of mixed messages that our “practitioners,” police officers, receive. Allow me to share a few examples.

We have told police officers from the time they are hired that they are warriors. That they are soldiers in the war on drugs, that they are warriors in the war on crime, soldiers in the war on poverty, soldiers in the war on violence. We have told them they are crime fighters—that fighting crime is their purpose. But we also tell police officers that they should function as a social worker, as a counselor, as a peacekeeper. We ask them to be community leaders, code enforcers, and in some places, revenue generators. Here are just a few more—safety provider, mental health provider, drug overdose treatment provider, medical technician. So we tell them they are all these things, and guardians also, by the way, which I personally like, but we tell them all these different things are their roles.

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These roles can emerge at different times during an officer's career. Sometimes one takes the place of another and sometimes they are expected to fill all of these roles at the same time. And by the way, we also tell them that we expect them to do every single one of these things "right." What do we mean when we say do them "right?" Well, the definition of "right" is constantly being redefined. It can vary based on who your supervisor is, who the Mayor (or Sheriff) is, or even what part of town you happen to be working in at the time. Image the persistent mental struggle and stress that these mixed and often unfixed messages create. Research has shown that this phenomenon alone can have very serious health effects for officers.

Placing the officer health issue aside for a moment, this lays bare the enormous challenge of defining success. Given what I have just described—how can true success in policing be identified when the measurement of success varies so much at different times, in different places, and based on very different expectations?

I think one of the biggest obstacles police have as a profession is the fact that we tend to do what is easy in terms of measuring success. The easy thing to do is to count numbers. Statistics may tell us how much crime exists but are they really a good indication of how good a job police are doing? Couldn't success in policing be defined by the presence of justice rather than the presence (or absence) of crime? It is more difficult to figure out if the people we serve feel safe in their communities as opposed to how many thefts occurred in a given time. Do businesses believe that it is safe to locate and conduct business in the community? Do people feel safe letting their kids go across the street to the park? Do they feel safe walking around their neighborhood? Are crime and safety their primary thoughts as they live their lives? Those things are really tougher to measure, but in the opinion of many experts they may be a better measure of success.

When you add to the lack of defined roles and absence of identifiable success, the deficiencies in measuring the effectiveness of solutions for our communities, the lack of comprehensive officer training, and lack of support for officer wellness, it becomes clear that taking a band-aid approach to issues will not fix the problems faced by law enforcement and our communities.

We must take a comprehensive approach by adopting internal procedural justice. This is absolutely critical. Unless procedural justice is present all of the other challenges become far more difficult to address. When a law enforcement agency is grounded in *internal* procedural justice, officers feel that they are being treated fairly. When a government is grounded in procedural justice, its agents practice procedural justice on the street, and community members, the people who police officers interact with, feel that they are being treated fairly. I have been unable to find a single person who thinks it is realistic to expect officers who do not feel

they are being treated fairly at work to act differently toward people they encounter while performing their work. Putting it another way, if an officer is facing a routine culture of disrespect by superiors, why would we expect the officer to display anything different to citizens on the street?

The President's Task Force on 21st Century Policing evaluated a bigger picture to develop recommendations that focused fundamentally on procedural justice with the understanding that this would impact all of the other issues facing law enforcement. The task force heard from over 120 live witnesses; we read thousands of pages of written testimony submitted by experts from one issue to the next. One of the things that really struck me, and I think others on the task force, was when police officers were asked what the highest cause of stress in their lives was. They did not cite being shot, they did not cite being in a fight, they did not cite fighting crime, the danger of their employment, stress in their marriages or personal relationships. The number one factor identified as the cause of stress in their lives was how they are being treated by their employers. (Or, how they felt they would be treated by their employers.) That says a lot about the fact that there is an absence of, and need for, internal procedural justice.

Against that backdrop and the controversial political and public relations landscape of the past twenty-four months or so, in Illinois, our General Assembly passed the Police and Community Relations Improvement Act. Ashley Jenkins, Deputy Chief Legal Counsel for the Illinois Senate, is attending this symposium and I would like to acknowledge her dedication and work in drafting this momentous law.

Many elements included in the Act were issues identified during the symposium's first panel today. For instance, the law now requires independent review of officer-involved shootings and other measures that have been identified as best practices in establishing trust between police officers and the communities they serve.

In addition to establishing trust, one of the things the legislature wanted to do was push forward on the recommendations regarding police training from the President's Task Force by codifying them into statute. Motivated by the goal of moving the profession forward, the General Assembly created some pretty significant training requirements. For instance, as a result of the new law, we expanded the basic training curriculum so when officers enter the academy, their coursework must include courses on procedural justice, on cultural competency, on implicit bias, on the proper use of force and law enforcement authority, and on dealing with the disease of addiction.

I have been involved with law enforcement in one facet or another for about twenty-five years now. Having looked at it from a number of different angles, professionally and personally, I do not believe there is one issue that impacts crime, violence, and the criminal justice system, more

than the disease of addiction. Nothing . . . nothing permeates it more. We see it at every level on the street—the simple drug transaction, drug users committing crime so they can make a drug transaction later, the business of dealing drugs and protecting the territory to operate drug distribution, or people who are arrested because of their conduct when they are under the influence of drugs or alcohol—addiction is there.

The Department of Justice actually did a study of inmates and found that over seventy percent of the people incarcerated in state prisons were regular drug users before they were incarcerated. In federal prisons, the numbers are a little lower, about sixty-four percent. But those are still pretty staggering figures. Amazingly, there was never a requirement for law enforcement officers to get any kind of training about the disease of addiction. The other reason it is important for them to have that kind of training is precisely to help them recognize some problems that may be occurring with their colleagues or themselves. This will facilitate an opportunity for movement toward a cure rather than a movement toward the bottom. This topical commitment to training is really significant. Other requirements include dealing with people who are suffering from a mental illness and sexual assault victims.

In addition to the basic training curriculum requirement, we also added annual training requirements. Previously, police officers' annual training requirement included weapons qualification—that is not really training, it is really putting rounds down range into a target—and hazmat training, which is dealing with bloodborne pathogens, essentially, how to clean your squad car and equipment if they become contaminated. Now annual in-service training includes instruction on legal updates and use of force and, every three years, refresher training on procedural justice, civil rights, cultural competency, and the proper use of force. So not only do we pick up the basic training piece, the annual training piece, but for officers who are already on the job who would not get the training under the annual training, every three years they are going to get the procedural justice training as well. These are very progressive training requirements for any state and the state of Illinois is now leading in this area.

I want to address a few things that are missing from the legislation and a couple things that are missing nationally. I point this out because I think it is tremendously important and it is also kind of tragic that we do not have it. In the medical field, there are sentinel event reviews that occur as matter of routine. Sentinel event reviews occur after there is an incident, maybe somebody dies in surgery, or a mistake is made—perhaps the wrong arm was operated on. In the medical field, sentinel event reviews, where everyone who was involved in that procedure sits around the table in a non-blaming, non-judgmental format talks about what happened. The goal of these reviews is to “figure out the mistakes we made, learn from them, and

share them with other people so that the next person who is operated on doesn't have this happen to them.”¹ They are able to do that because there is a law called the Healthcare Quality Improvement Act, which gives them basically a legal privilege, so that anyone who is involved in the process can speak freely without fear of having their statements used against them later on in litigation, and so forth.

Imagine how many lessons could be learned and shared, especially with the oncoming use of body cameras, to avoid mistakes and identify other ways to successfully deal with any given situation. If we could sit down with the officers involved in an incident, and allow them to review their video and talk to each other about the incident and what went wrong, what mistakes were made, what was missed, what was not, what was done right, and just have an open, honest conversation. The training value of that would be tremendous. Unfortunately, those discussions do not happen and they likely will not happen until there is some kind of a legal protection so that they can be facilitated. I think that is a goal that we should work toward.

In terms of officer safety and wellness, I believe we need a national peer-to-peer hotline for police officers. I am an attorney. If I feel like I have a substance abuse problem, or if I observe a colleague who I believe is having a problem, there is a toll free number I can call and another attorney will call that person and talk to him about whether they have a problem or not and offer them some routes to recovery. That does not exist for police officers. Funding and staffing a program like this should be a priority. The amount of damage that could be caused by someone who is suffering, from any number of causes—maybe they are having marital problems, maybe they have a drinking problem, whatever the case may be—is tremendous. The suicide rate among police officers is among the highest of any profession. Many of those harms could be avoided if there were a safe place for officers to go say, (a) “Hey, my partner’s going through a divorce and I think he’s having a tough time,” or (b) for an officer to call and say, “Hey, I am having a tough time. I’m feeling like I might want to kill myself.” We need to have a national hotline to do that and that should be available to officers, and that is one of the recommendations the task force reports.

The other thing we really need is some medical research to evaluate the impact of shift work on police officers. Police officers do a lot of shift work and we know from prior medical research that shift work can be extremely damaging to them physically, emotionally and mentally, as it can anybody who works a 24 hour per day operation. What we do not know is

1. See *Mending Justice: Sentinel Event Reviews*, NATIONAL INSTITUTE OF JUSTICE, <https://www.ncjrs.gov/pdffiles1/nij/247141.pdf>, (Sept. 2014).

what the optimal number of hours for a police officer to work during a day is, and we do not know how to identify people who are geared to work during a particular time of day that is optimal for their own physiologies. Some people actually are geared to work midnights, other people, if they work midnights, suffer traumatic impact on their physical health. We need to figure out a way to identify those folks and help them work the hours they work best.

Finally, I have had the privilege of representing police officers in various ways for over twenty years now, and one of the things I have done is to respond to officer-involved shootings. I would like to tell you a story about a call I got many years ago that I hope will illustrate why this symposium and the topics we are addressing are so important.

About seventeen years ago, I responded to an officer-involved shooting where a person had been killed. I tell this story because there is damage at so many levels and I think it could have been prevented at some of those levels. In a rural central Illinois town, there was a young man, probably about nineteen or twenty years old, who was apparently schizophrenic. Everybody knew it. The police had dealt with this person over the years, most of the people in the town knew about his mental illness, and there had been repeated incidents over the years when he was not medicated properly and things had gotten a little bit sideways. So, one night at about 12:30 or 1:00 in the morning, I got a page and responded to the scene of an officer involved shooting. What I found was just a scene of tragedy. And not necessarily limited to the fact that the officers had shot and killed this young man, but tragedy for the officers themselves, because two police officers responded to a call for assistance. The young man's parents had called. He had not been taking his medication. He was harming himself and was very threatening to them and others. And so the police responded.

They knew this kid, they had dealt with this kid and when they arrived on the scene he did not recognize them. He was convinced that they were demons sent by Satan, there to take him to hell. And he attempted to stab them with a pitchfork. They did not have tasers then. Unfortunately, ballistic vests do not stop pitchforks. And so, in the last minute they had to use their firearms and shoot him. As a result, the young man died. The parents, who witnessed the whole thing from distance, were extremely distraught, but not at all blaming of the officers. They had called the police because they were afraid their son was going to harm or kill them.

But the officers blamed themselves. As a result, one of them left the job shortly after this occurred, and I kind of lost track of him. The other one never has forgiven himself for shooting that kid. I will tell you straight up, it was a justified shooting; there is no question. Their lives were in danger, one of them in extreme danger. The use of force was justified.

They used the tool that they had, but it ended one career. The other officer who has not forgiven himself has resorted to other measures sometimes to numb himself, and that has resulted in us having more of a relationship than I have had with a lot of the people I represent.

I think it is important to tell that story because it really was damaging to the officers, it was damaging to the family, and it was damaging to the whole community because they all knew this kid and knew that he was suffering from mental illness. And there had been multiple times when the police had to be called because there was no one else to call. There were multiple times when they had to take this kid into custody because there was nowhere else to take him. There were multiple times when he went into jail, got medicated, and was released from jail, and there was no hand off to a mental health provider. And so, the reason the officers knew the kid so well, was because they had repeatedly been involved in this pattern of “he forgets to take his medication, or he does not take his medication, he slides into this psychotic state, they arrest him, they get him into custody, they get him medicated properly, the courts release him,” there is no medical care to bridge the gap. And as a result at the end of the day, the tragedy occurs.

I am hopeful that this afternoon we are going to have a lot of discussion about mental health and related issues. I am hopeful that one of the things that will come out of this is not just recognition of the challenges, but collaboration between law enforcement and the medical community to respond to the challenges we share. Perhaps we can start with developing a template for transitioning people from the criminal justice system to the medical system so they can get the mental health care they need, so tragedies like the one I just described do not happen in the future.

