



Déjà Vu All Over Again: The Death of Tyre Nichols and Need for Change in Policing the Communities

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Abstract

The recent death of Tyre Nichols, a 29-year-old Black man in Memphis, following the pattern of several others including George Floyd in Minneapolis in May 2020 underscores the importance of change in policing communities in the United States. African Americans account for 13 percent of the nation's population but constitute 24 percent of those fatally shot by police, with a likelihood of 2.5 times to that of White Americans. Dating back to the 1931 National Commission on Law and Enforcement's Report on Lawlessness in Law Enforcement, there has been an ongoing concern about the pervasive violent policing in African-American communities; however, this concern has drastically increased in recent decades, especially in the post 9/11 era with the advent of modern technology that drastically increased public awareness through social media and television on one hand, and the routine use of military-grade equipment by police departments in urban communities on the other. Images of police officers in helmets and body armor riding through neighborhoods in tanks along with stories of protests following the killings of Black citizens became regular televised reports. This paper examines the recent escalation of police use of excessive force adopting such operations as SCORPIAN (Street Crimes Operation to Restore Peace in Our Neighborhoods) as a part of police militarization and argues for the need to revert back to community policing—a method that once viewed to be less violent and more effective.

Keywords: Tyre Nichols; SCORPIAN; Community Policing; Memphis; Police Militarization; Excessive use of Force

Abbreviations: DLA: Defense Logistics Agency's; LESO: Law Enforcement Support Office.

Introduction

During the past few decades, Americans have amazed themselves in the successful operations of U. S. Military Special Operations Units, such as the Navy SEALs, Army Special Forces (Green Berets), Army Rangers, Marine

Reconnaissance, and Air Force Special Tactics Forces, during operations in designated areas. These accomplishments along with increase crime rates in most of the Nation's major cities created the unrealistic possibility that such elite military would be able to combat America's growing crime rates after the death of George Floyd. Through a combination of political exploitations, retaliatory law enforcement performance slow-downs, financial rearrangement, and actual budget cuts, several cities, counties, and states moved

with ease in establishing their own special operations units. Civilian law enforcement training activities and response protocol/policies started to look more and more like some version of the Military Special Operations Units. The Defense Logistics Agency's (DLA) Disposition Service became a silent partner in what is today known as "police militarization." By allowing the Nation's law enforcement agencies to acquire such a wide range of surplus supply items, to include armored vehicles, large caliber and tactical weapons, tactical clothing in the eyes of many, changed the image of law enforcement agencies from "protectors" to "occupiers."

Looking Back

Historically, this level of military assets sharing would have previously been considered violations of the Posse Comitatus Act. This Act, which in its earliest format prohibits the use of active-duty military personnel from participating in civilian law enforcement, based on the extensive uses and abuses of the military in civil law enforcement operations during the Civil War and Reconstruction (The Posse Comitatus Act of 1878). However, the updated law designated these items for destruction or resale to the public under an established authority called the "DLA Law Enforcement Support Office (LESO) 1033 Program" [1].

This law allows the Secretary of Defense to transfer defense assets and material to federal, state, and local law enforcement agencies, and such agencies could receive these items for bona fide law enforcement purposes. The following items are prohibited from LESO receipt: aircraft, tanks, fighting vehicles that inherently contain weapons, such as armed drones, crew served weapons (.50 caliber or higher), and explosives or pyrotechnics of any kind. However, some of these methods may be provided by other federal agencies, such as the Department of Homeland Security, the Department of Justice, the Department of the Treasury (Assets Forfeiture Fund), and the General Service Administration (National Defense Authorization Act for Fiscal Years 1990, 1991, and 1997, respectively.)

On January 16, 2015, President Barack Obama issued an Executive Order that rescinded the sharing of most of the noted assets that were being provided by the specified federal executive agencies (White House Executive Order 13688). The order established specific protocols for training and accountability for the transferred items. Nonetheless, on August 28, 2017, President Donald Trump revoked President Obama's Executive Order, which allowed most of the prohibited items and added tracked armored vehicles, bayonets, and grenade launchers (White House Executive Order Codified in Fiscal Year 2016 National Defense Authorization Act) [1].

Current Situation

Present day conversation about de-funding the police and police relations are evidence the nation is desperately seeking criminal justice reform, especially regarding matters of law enforcement practices. Law enforcement officers and the community alike have an expectation of criminal just personnel, inclusive of arresting and issuing citations, which inevitably is a small portion of the responsibilities our men and women of blue carry out daily. Making light of what officers are responsible for causes a disconnect between what the community desires and the legal responsibilities for law enforcement. State laws legally delineate the main roles for those entrusted to enforce the standard, meaning state government will also need to be invested in lasting transition and effectual change. Studies conducted in 2005 concluded reviewed state statutes from 2002 and states attempted to increase definitions for community-oriented policing, but to appease both sides of the political aisle add more crime control definitions, almost cancelling efforts for closer movement toward COP [2].

While there is popularity for order maintenance models, practices such as New York City's "stop and frisk" holding a zero-tolerance model have proven to be more harmful than helpful. Citizens such as young African American males in identified boroughs of New York City reported harassing behaviors from officers as well as a firsthand accounts of reprimand from a superior toward an officer for the limited amount of probable cause "stop and frisk" searches he conducted. His superior reportedly criticized the officer and accused him of deliberately not fulfilling his duties because of his limited amount of search in an identified high crime area. Politicians, however, have other statistical evidence of low crime rates supporting these aggressive practices. There is more evidence that aggressive proactive policing strategies creates a breeding ground for abuse of a citizen, or worse, a fatal incident with a citizen. African American males living in these communities find themselves more fearful of the police than being a victim of criminal activity. Therefore, the time is now for community oriented policing practices to be fully embraced. Elements of COP, if implemented correctly, is found to eliminate the division between the community and law enforcement. It was found in the 2013 Law Enforcement Management and Administrative Statistics survey implemented by the Bureau of Justice Statistics that nine out of 10 local departments include elements of COP in their mission statement, however, the elements are not fully executed in practice and follow-up with officers regarding the success of implementation is limited. Implementation needs to be unified so there is no ambiguity regarding execution. In essence, there may be resistance with this notion being there is no one size fits all solution when communities vary in size

and need throughout the country. Therefore, community policing should not be planned by law enforcement alone. Community partners and stakeholders should have a seat at the table as well [2].

Escalation of Specialized Forces and Paramilitary Operations

Problem-oriented policing, guided by crime statistics, became an optional law enforcement service model in the 1980s [3]. Its focus was on crime, disorder, and fear of crime and the police utilized a variety of means to address the associated problems through directed patrols, hot spot enforcement, predictive policing, drug enforcement, violent street crimes, taskforce operations, undercover operations, store fronts operations, S.W.A.T. Team operations, executions of search warrants, fugitive apprehension operations, “jump out operations”, to name just a few [4]. In this process, the establishment of specialized forces or the paramilitary special operations units took place within the law enforcement communities. As law enforcement officers became the principal agents for building these special relationships, and partnerships, they also became part of the problems that generated unworkable solutions that continuously plagued neighborhoods and did not accommodate the cities where they were employed.

The problem-based policing model allows law enforcement officers act in accordance with their own version of law enforcement without the support and participation of the community. They identify the crimes, enforcement strategies, and tactics that they feel are appropriate to a given neighborhood. After a period of implementation, they independently assess the solutions’ effectiveness on the problem. Almost all the time officer accountability and administration responsibility mandates were missing. Their assessments of accomplishments and successes routinely supported the continuation of even the most draconian tactics [5].

Compounding the missteps of problem-based policing, political pressures forced many cities into another concept that only aggravated the problems of lacking community support and assistance to the police in addressing the fears of crime. This intervention was called Operation Weed and Seed. It was a federal initiative that purported to “weed” illegal drug sales out of communities, addressing the public welfare offenses relating to prostitution and public drunkenness, through intensive law enforcement and prosecution efforts, then “seed” the communities with protective, economic, and social resources. However, the dramatic decline or lack of resources resulted in ineffective solution for resolving such minor offenses that required the provision of shelters, crisis counseling, drug treatment, or job training [6].

Those violators, instead, were too often confronted by aggressive decentralized law enforcement crackdowns and criminal sanctions without responsible involvement by law enforcement leadership. Intensifying the ever presence of shortcomings associated with problem-based policing and its use of the “weed and seed” community intervention came to zero-tolerance policing. This concept of policing focused on both crime and disorder problems through proactive means and calling on criminal, civil, and administrative laws. It targeted specific crimes that are common in low income and minority communities, such as prostitution, open air drug markets, disorderly conduct, panhandling, graffiti, and other infractions—instead of addressing the source (poverty) of these crimes, because officers like William J. Bratton, who is known as “America’s Top Cop” opposed the views that crime is a result of social and economic forces (e.g., poverty, unemployment, police practices, racism, etc.) and embrace the notion that crime is simply a matter of behavior [6]. The of success of zero tolerance policing, as with other crime intervention strategies, was measured in terms of the number of arrests, tickets, or field stops, with the desired outcome being a reduction in the undesirable behavior in a specific community [7].

The foregoing discussion highlights the urgency and importance for planned changes in law enforcement’s response to crime and citizens’ fear of crime. Unplanned changes more often produce crisis, like the death of Tyre Nichols in the current situation, gravitate the attention of the media and the public, and result in a political catastrophe, or lawsuits against a government agency leader, or an untested set of assumption about a specific problem [8]. Two broad approaches may be considered in bringing about the necessary in the present situation of increased criticisms of police misconduct, the militarization of law enforcement agencies and their operations, and law enforcement agency leaders not causing adequate assessments and evaluations of their law enforcement tactics [8]. First, explore collaborative strategies for involvement of all parties concerned. Individuals, groups, or organizations, who are known to be stakeholders of the proposed change should be included in the design and planning of the proposed change. Secondly, address conflict strategies that are more likely to be raised by the opposing parties with a history of disagreement and leaders in favor of dictatorial, authoritarian style of management. A good example of conflict strategies is provided by the allegations of brutality and subsequent lawsuits involving Tyre Nichols v. City of Memphis, Tennessee. Because citizens perceive the existing system of handling complaints by African American citizens as ineffective and heavily biased in favor of police, legal reforms and police reform in these areas are highly profiled [9]. Klockars, et al. [10] four barriers to control police corruption—the

abuse of police authority for gain¹: (1) the police officers' reluctance or unwillingness to report wrongdoings of their fellow officers—which is termed as “The Code,” “The Code of Silence,” or “The Blue Curtain” [11]; (2) the police administrators' reluctance or unwillingness to recognize and acknowledge the existence of corruption within their units or agencies; (3) the hidden benefits (tangible or intangible) of corrupt activities to the parties involved; and (4) the absence of immediate reporting victims (due to lack of knowledge or fear or other reasons). The availability of technology (e.g., body cameras or bystander videos) and media outlets in recent decades facilitated bringing the extreme incidents like killings of innocent persons to the public attention, but other forms of corruption remain unexposed or handled internally like New York's Internal Affairs Bureau (IAB). Even in such cases, investigations and accountability of officers are frequently unsatisfactory to the public. Goldstein [12] suggested four administrative dimensions as remedies to address the problem of corruption: first, the organizational anti-corruption policies and practices must be established, communicated, and understood by all parties of the agency; second, a wide range of mechanisms to prevent and control corruption (e.g., ethics training, integrity testing, disciplinary actions, etc.) must be employed within and across police agencies; third, the system-wide culture of reporting misconduct by fellow police officers must be cultivated across police agencies; and finally, the importance of public expectations about police integrity must be emphasized across all police institutions, systems and agencies [10].

Although corruption is widespread across law enforcement, majority of policemen are not responsible for brutality, violence, and use of excessive force. The Rotten-Apple theory suggests corruption, deviance, and brutality is limited to a small number of officers who were dishonest prior to their employment in the law enforcement profession. The term “rotten apple” stems from the metaphor that a few rotten apples will spoil the barrel; that is, a few bad apples can spoil any police department. In response to the Memphis Police Department case, a new or revived enforcement program should be created for addressing the creation and functions of the currently defuncted Scorpion Special Operations Police Unit; the revived program should confine to specific goals and achievable objectives, with clear and precise definitions of problems and effective solutions; and, the program should seek input from all those who are likely to be impacted (e.g., both law enforcement personnel and members of the communities they serve). Police managers

and leaders must be well informed about managing behavior and conflicts between their officers and community groups.

The Memphis Situation

The Memphis, Tennessee Police Department advertises itself as a multi-dimensional agency that is dedicated to maintaining public safety through crime prevention, community policing and data-driven intelligence. Staffed with officers who are highly trained, technically proficient and culturally sensitive; a proactive police force that solves problems by building trust, communication and cooperation with the communities they serve. Publicly, their mission statement declares a vision of zero tolerance for crime as well as its compassion and responsiveness to the needs, rights, and expectations of all its citizens. Even though Blacks make up 65% of the city's population, a Black female police chief, and Black officers making up 56% of the Memphis Police Department, it found itself in the center of the most recent national debate over police reforms. It has quickly transcended itself as the current flash point in the country's sad history of police violence against Black men. Tyre Nichols had a lethal encounter with the Memphis Police, Special Operations Division's Scorpion Unit members, that sent him to the hospital after a humiliating public beating that caused his death. Social scientists have scrambled to explain this tragedy that seems to successfully challenge the notion that diversity does not override the dominant subculture in today's law enforcement agencies, since the five officers charged with Nichols' death are black themselves.

This phenomenon is a foundational motivation for this article, since the authors of this article collectively have observed that “blackness” in law enforcement agencies does not overcome the subculture tragedies of “police brutality.” From a departmental structural perspective, informal organizational arrangements often have a great impact on special operations units in most law enforcement agencies. Individual beliefs, values, and norms in law enforcement agencies are strongly influenced by group behavior, especially young and inexperienced officers. Socialization in law enforcement occurs when recruits, young and inexperienced officers tend to develop a different view of the policing profession from that of their managers and leaders. Most law enforcement leaders and managers are generally concerned with departmental priorities, policies, and procedures, whereas officers are generally concerned with doing the job according to the street, often acquired not from the department's view of reality but from the officer's perspective, determined by just trying to survive their agency employment through an “ends – means dilemma.” These differing perspectives can result relationship, where street cops maintain their own code, which can include the type of unlawful behavior that was seen via Memphis community

1 Knapp Commission report categorizes corrupt policemen into two categories: meat-eaters and grass-eaters. Meat-eaters, though small in number, are those who aggressively misuse their powers for large personal gains. On the other hand, grass-eaters simply accept the payoffs and gratuities that the circumstances of police work may develop (New York City Commission to Investigate Allegations of Police Corruption, 1973).

monitoring cameras and the police body cameras worn by the five law enforcement officers that were charged with Tyre Nichol' death. The events surrounding this tragedy have the markings of many of provisions of the Street Cop's Code and the Code of Silence from earlier decades.

The Street Cop's Code and its general interpretations are as follows:

1. Take care of your partner first, and then other officers. Many cities in the past maintained a "two car riding partnership" for both detectives and patrol officers. While productivity studies later determined that such assignments were very costly and generally not very efficient, the rationale was that they provided a safety umbrella for those on the front line of crime and created positive ties and relationships with police union leaders. Nevertheless, it created dependency, deep friendships, and social attachments. These characteristics created bond that caused officers to go to the most challenging experiences to ensure the safety and well-being of their assigned working partners.
2. Don't "give up" (inform on) another cop; be secretive about the behaviors of other officers. This thinking is ingrained in law enforcement officers starting at the police academy, and while most police departments started out being modeled after the Military, the mandates of Military academy cadets were indoctrinated on a belief foundation of just the opposite. The law enforcement officer, in most of these situations, were made to believe that citizens and members of the community really didn't appreciate the role they played in public safety and were so comfortable to be insensitive to their situations. Therefore, a fellow law enforcement officer was the only person who knew the sacrifices it took to work in this field, and the only persons who could be trusted to have their backs, assist their families, and protect them in life threatening situations.
3. Show courage; take control of a situation and don't back down. Many cities made this a requirement by enacting official policies that punished cowardness. Many officers unnecessarily risked their lives, and some were seriously injured trying to demonstrate a certain machoism by not retreating when the odds were grossly in disfavor to their cause and capacity. To escape such tags, such as being "scary," "cowards," "chickens," "yellow," and other demeaning descriptions, many law enforcement officers would intentionally abuse their authority by using unlawful force to teach members of the public to obey them, to not resist or fight them, or try to escape them by running away after being directed to stop.
4. Be aggressive, when necessary, but don't go looking for trouble. The logic in this position is seen as creating respect for law enforcement officers from the public by acting on the circumstances as they are seen or interpreted by the officers. There always should be an ongoing effort by all law enforcement officers to train citizens to never challenge the police to ensure the citizen's behavior does not create problems for other officers.
5. Don't interfere in another officers' sector, zone, or work area. Officers should get to know their area of responsibility and the people who make up their work area. This gives the officer the latitude to mold his or her area according to their liking.
6. Do your fair share of work and don't leave work for the next shift; however, don't do too much work. This standard takes the position that too many accomplishments create unrealistic expectations of officers, and managerial and executive expectation needs to have variations.
7. If you get caught making a mistake, don't implicate anybody else. The good officer does his best to not make mistakes, but too many of them bring unnecessary attention to oneself.
8. Other officers, but not necessarily managers and executives, should be told if another officer is dangerous or "crazy." This is done because of an awareness of the officer's family's needs for his or her income and benefits, so telling managers and executives mental shortfalls is not acceptable.
9. Don't trust new officers until they have been checked out. These individuals have everything to gain and nothing to lose by sharing information that can be of detriment to the more experienced officers.
10. Don't volunteer information; tell others only what they need to know. This drill allows an officer to comply with supervisors, managers, and executives, but don't disclose anything that is not required, because of a fear it will come back to haunt the officer.
11. Avoid talking too much or too little; both are suspicious. Officers should practice these behaviors so as not to bring attention to themselves, other officers, or matters related to the operations of the law enforcement agency.
12. Protect your "rear end;" don't give managers or executives of the systems an opportunity to get you. Officers should be vigilant and engage in self-protection activities first.
13. Don't make waives; don't make problems for the system or managers and executives. Officers and trusted confidants are the best sources to handle problems, and they should never bring unnecessary complaints against another officer or create problems that could expose the reporting officer.
14. Don't suck up to supervisors, managers, and executives. This type of behavior gives the impression that one officer might be trying to get a promotion or a raise out of turn from the normal process.
15. Don't trust managers or executives; they may not look out for your interests. There exist an "us and them" mindset in law enforcement, and each has to look out for

their group at all costs.

Because managers and the street cops' subculture must relate to the expectations of the communities they serve, there are both public and private worlds of law enforcement. As reflected in the above subculture, the private world of law enforcement has been characterized as politically conservative, closed and secretive, with a high degree of cynicism and an emphasis on loyalty, solidarity, and respect for certain authority. The cops' culture and the code of silence have the strongest influence on the socialization process and is most likely to impact law enforcement officers' behavior. This can cause a significant problem as the case was in Memphis, Tennessee. The badly-behaved officers' criminal actions were dictated by the subcultural conflicts with departmental policy, community interest, and state law. This type of conflict leads to a certain degree of acceptable deviant behavior, to include excessive force, racism, and criminal activity at the street level, as was seen taking place with the operations of the SCORPION Unit. Law enforcement managers and executives must be willing to deal strongly with such behaviors from the policy, ethical and legal perspectives, and stop being too attentive to the notion of maintaining an image that avoids controversy. These types of management and leadership missteps often align themselves with organizational failures. Managers and executives might even make no attempt to uncover inappropriate or illegal behavior, as well as not disclosing it or maybe just disclosing parts of it.

Public accounts suggest that the Memphis Police SCORPION Special Operations Unit, and its predecessor Organized Crime Unit, have operated in a manner that violated citizens Constitutional Rights, Civil Rights, and Human Rights for more than forty years. However, managers and executives were unwilling to properly evaluate the unit's mission and tactics using a program outcome model as opposed results-oriented model.

Discussion

Many civilian law enforcement executives and leaders have been put in a "no-win" position. Many have erred in responding to the country's crime problem by creating or supporting the creation of many draconian crime fighting tactics or simply refusing to follow police forms that show even marginal improvement possibilities. For example, too many have listened to or agreed with officers or their bargaining unit representatives who complained about the total implementation of the Community Oriented Policing Model.

Others have subscribed to the naïve mentality that that the "law enforcement department" belongs to them

alone, and they know best about how to fight crime in the communities they serve. Such attitudes abandon the possibilities of community partnerships and collective participation. These types of attitudes have served as a foundation to create special operations units to address the crime problem that many of our communities are facing because the law enforcement leadership is steeped in an authority-oriented model that have military overtones; and they are still largely decentralized with poor supervision and management capabilities. The limited outcomes are tied directly to strong political ties of the law enforcement leadership and keeping the citizens satisfied by keeping some semblance of order. Taking orders solely from the law enforcement hierarchy, thus making the officers' interactions with community members and other social agencies extremely limited. This mindset tends to prove ill-suited for controlling crime and delivering community-based social services. Clearly the progressive law enforcement chiefs who understand the need for change and reforms must realize that law enforcement operations cannot be associated with paramilitary templates or classical organization methods that emphasize occupation forces, preventative patrols, and rapid responses to calls for service [4].

If law enforcement is to survive as a profession, its leadership must be engaged in planned change. First, chiefs must be fully committed to remove corruption and brutality from the ranks and keep the momentum moving toward professionalism. Police integrity must be frequently tested and monitored throughout the system. The distancing of law enforcement officers from the citizens they are sworn to serve generates new problems and conflicts. To deal more effectively with crime, fear of crime, and disorder, law enforcement needs to focus on those factors that contribute to crime by providing a broad array of services. They must be capable and willing to respond to the demands of these citizens and use various problem-solving and geographical information systems to identify trends and solve underlying problems rather than symptoms. The ultimate success of any crime detection or prevention program should not ride on the number of arrests made only; therefore, continuous measurements, auditing, and assessments are paramount to effectively determining program or unit success. By applying this framework and approach to providing law enforcement services, it clarifies the direction of law enforcement agencies and reduce the occasions for police corruption and brutality. The community policing model is primarily focused on building community partnerships and crime prevention. It encourages law enforcement agencies to proactively develop solutions to the underlying conditions to public safety problems, rather than responding to crime after it occurs [13]. Although community policing still uses criminal law, it encompasses a much wider scope of alternatives, including administrative and civil law, mediation and arbitration, as

well as redirecting problems and working with other social services agencies. The law enforcement officers that work under a community doctrine are more proactive in dealing with the problems of crime, disorder, and fear of crime because they work hand-in-hand with community (Oliver, 2006). Community policing efforts help bridging the gap between police officers and citizens, thereby minimizing the distrust and condemnation. When these efforts are combined with robust reforms to policing practices, a trust-based policing becomes an achievable goal [14].

Conclusion

The death of Tyron Nichols in January 2023, following an unjustified excessive use of force and brutal assault by Memphis' SCORPION unit police officers, was a Déjà vu moment for many citizens, especially African Americans around the nation. They remembered events from Rodney King to Sandra Bland to George Floyd, Breonna Taylor, Botham Jean and Eric Garner. Each time they cried for justice and reform, expressed their dislike with existing policing practices by ways of both peaceful protests and violent riots. Their messages were ignored, and their actions were forcefully suppressed by using military grade armor. Lora Dene King, the daughter of Rodney King released a statement, "We should not have to witness such things in this world over and over with a different name behind the hashtags" [15]. Several called for police reform at Tyre Nichols' funeral [16] once again. But, how did we get here? What should be that change that the public is seeking for? This paper addressed these questions and try to suggest that community policing, which was once seen as effective policing strategy. Community policing is not an attempt to totally do away with order maintenance, but to improve upon the delivery of such practices. Involving the community will be a part of the solution and the hope is that trust and respect will be restored for the community and law enforcement. The community will also believe the change is sincere and lasting if law enforcement officials carry out suggestions they may have. The push for community policing is an attempt to prevent the "Ferguson Effect" from becoming rooted and grounded in the framework of our communities. Our nation will not want an increase of community versus law enforcement conflict, and a rift between citizens and those sworn to protect and service them. While implementing community policing, there should not be an attempt to make order maintenance of more importance than community policing or community policing the primary goal. Both should be embraced as one in the same. Law enforcement officers should work with the community to keep order and peace and crime control efforts should be clearly articulated as well [17-21]. There is work to do to eliminate the gray area of where community policing begins and where order maintenance ends, for there is neither a beginning nor an end [2].

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