

Written Questions for Art Acevedo
Submitted by Senator Patrick Leahy
June 23, 2020

1. You have supported peaceful protests across the country and acknowledged that communities of color are disproportionately impacted by police misconduct and brutality. You have also served as a police officer for over three decades.
 - a. **In your experience, what reforms have been most effective at actually reducing the rate of excessive uses of force, and at reducing the disparity in treatment of people of color?**

Reforms focused on promoting accountability and transparency, improving use of force policies, and supporting community/relational policing have been most effective at reducing misconduct and brutality.

Updating use of force policies to prioritize the sanctity of life above all else have been valuable. This includes ensuring that policies are robust, frequently updated, contain lawful responses to resistance, establish a duty to intervene, and require the use of de-escalation tactics and techniques where safe and feasible. Policies must give officers a wide range of tools (and the associated training), including less than lethal techniques, to resolve situations as peacefully and safely as possible. Officers must also be trained to slow down their decision making in critical moments and analyze all the relevant factors and tools at their disposal to ensure the action taken does not unnecessarily endanger members of the community, suspects, and officers.

Reforms focused on fostering a culture of accountability, where there is zero tolerance for any action that jeopardizes public safety or violates the trust of the community, have also been critical. This includes doing more to remove bad police officers from our ranks. Instituting policies that encourage other officers and members of the community to report misconduct—and ensuring they are protected when they do so—have helped identify problem officers. The use of early warning systems and properly vetting new recruits has also been valuable. When misconduct does occur, it must be thoroughly investigated and conclude with decisive discipline when warranted. Fostering accountability also includes ensuring transparency. Turning law enforcement agencies into data driven organizations has helped inform decision-making, identify problems, keeps the public informed, and provides a clear rationale for why a certain course of action was taken. The use of technologies like body worn cameras has also been instrumental in addressing misconduct.

Reforms that support community/relational policing and help develop mutual trust and respect between law enforcement and the public have been crucial in reducing misconduct. This begins with hiring officers who are service minded professionals. Executives and officers cannot build community trust sitting behind a desk, and every encounter serves as an opportunity to connect with the community served. Investments in initiatives like police athletic leagues and food drives, as well as non-traditional programs, have helped foster community-law enforcement interaction. Engaging with leaders in the community beyond the conventional religious,

nonprofit, and business leaders, such as activists, music artists, athletes, and other community leaders and influencers has also been valuable. Finally, a concerted effort to ensure departments look like communities they serve has had a significant impact.

2. You recently testified in a House panel that defunding police departments is “not the answer” to remedying the disparate impact that policing has on communities of color, because underlying socioeconomic problems need to be addressed first.
 - a. **In your view, what are some of the major underlying socioeconomic problems that need to be addressed first?**

Quality access to healthcare, education, and employment opportunities must be addressed. We must also ensure these communities have access to basic human necessities, so it will be important to address issues such as food deserts too.

- b. **Do you agree that the police are often called upon to address issues better left to other professionals such as social workers or healthcare workers? Please explain.**

Yes, I do agree that police are often called upon to address issues that are more appropriate for social service professionals. Whenever an issue in society emerges, it is often times people’s first instinct to call 911. This has resulted in a dramatic increase in calls for service related to homelessness, mental health crises, and substance abuse issues. While law enforcement has more than adequately navigated these new responsibilities and developed strategic partnerships to help address these types of calls, in most instances, these are not public safety issues; however, when left unaddressed they can create circumstances that devolve into public safety concerns. These are not problems you can arrest your way out of. A police response does little to address the underlying issues and help get lives back on track.

- c. **Defunding police departments is often used as an over-simplified short hand for calls to more adequately fund other non-policing services that are critical to addressing some of the underlying socioeconomic problems plaguing communities of color. What are some of those non-policing services that you think need to be more adequately funded in communities of color?**

Mental health treatment, substance abuse treatment, and programs focused on ensuring disenfranchised communities have access to basic human necessities are some of the non-policing services that need to be more adequately funded. Addiction and mental illness, lack of food, shelter, or economic and other opportunities can be drivers of criminal behavior. In such cases, a criminal justice response is not the best course of action. Oftentimes, this ends up leading to a “revolving door” where these individuals are cycling in and out of jail. Ensuring these people have access to the help, treatment, and services they need will help address the root causes of their criminal behavior and have a more significant impact on public safety.

3. Victims of police violence have long struggled to seek redress in our courts. Improving training for de-escalation and use of force tactics within police departments may reduce incidents of excessive use of force, but these measures will do little to help the people who do fall victim to police violence and are tragically harmed or killed.

- a. **Do you support allowing victims of police violence to seek a civil remedy in a court of law? Do you believe that qualified immunity must be ended, or at least scaled back, for victims to have better success at obtaining accountability in court? Please explain your answer.**

No, qualified immunity should not be ended. Doing so would have far ranging consequences for law enforcement and the ability to protect communities. The fear of being held civilly liable may hinder officer performance and impact decision making. It would also likely significantly hurt recruitment and retention efforts. Finally, it may open law enforcement executives to liability when they take action to terminate or discipline officers who engage in misconduct.

That said, the high bar for meeting the “clearly established” standard used to determine qualified immunity has protected some truly egregious behavior. In order to support transparency and accountability, it may be time to examine how the doctrine should be changed to ensure it is not a shield for bad behavior or actions that are clearly outside the color of law and authority.

4. Some have argued that pattern or practice investigations, and resulting consent decrees, increase instances of police misconduct and violence.

- a. **Do you agree with these arguments? Are you aware of any evidence indicating that pattern or practice investigations and consent decrees increase instances of violence?**

I’m unaware of any data that supports this argument.

Chief Art Acevedo
President
Major Cities Chiefs Association
Questions for the Record
Submitted June 23, 2020

QUESTIONS FROM SENATOR BOOKER

1. When a law enforcement agency evaluates hiring a new officer who has worked in another jurisdiction, what barriers do you face in accessing any misconduct complaints filed against that officer, or any disciplinary or termination records?

The biggest barrier is state and local laws that shield disciplinary records and misconduct complaints. A lack of sunshine laws can make it very difficult to properly vet an officer coming from another jurisdiction. A lack of information sharing amongst departments can also pose a challenge. It is important that other law enforcement agencies be forthcoming and honest about an officer when called for a reference check. Finally, a lack of balance between providing due process and protections for labor while ensuring executives have the administrative authorities needed to hold officers accountable can be a hinderance. It is oftentimes a very lengthy process to discipline an officer who engages in misconduct and if he or she leaves before the complaint is investigated and closed, it may not appear in their file. Furthermore, in many jurisdictions, arbitrators have the authority to overrule any disciplinary decision in part or in whole.

2. If a national misconduct registry were in place, what further steps could police departments take to conduct a thorough background check on any potential officer hires?

Even if a national misconduct database existed, guaranteeing police departments conduct reference checks could help ensure background checks for new officers are thorough. These reference checks could capture information not included in the database (i.e. discipline that didn't meet the threshold for inclusion or was overturned by an arbitrator) and provides a potential employer with the opportunity to ask questions that can help address any concerns regarding the officer's fitness for duty.

3. If the Justice Department maintained a nationwide database of police uses of force, how might that data help to inform officer training on issues like de-escalation and alternative approaches to deadly use of force?

Modern law enforcement agencies should be data driven. The need for such a data collection effort was recognized by several major law enforcement organizations including the Major Cities Chiefs Association (MCCA). After working in collaboration with the FBI, a National Use-of-Force Data Collection was developed with practitioner input and was launched on January 1, 2019. The intent is to provide a nationwide perspective and not to assess if an officer acted lawfully or within departmental policy. Reporting into the data collection effort is voluntary as the FBI has no legal authority to mandate department participation.

It also important to note that many departments use different record management systems to collect data. Some of these systems are unable to collect and report on all of data requested by the FBI. Upgrading these systems, or procuring new ones, is extremely costly and many departments lack the required funding. Without additional assistance from the federal government to help ensure that law enforcement agencies have the systems needed to track all the necessary data, any national data set will be, at best, incomplete.

Chief Art Acevedo – Police Use of Force and Community Relations
Questions for the Record
Submitted June 23, 2020

QUESTIONS FROM SENATOR COONS

1. This crisis has shown the importance of trust between police and the communities they serve.
 - a. What have you found to be the most effective ways to create trust through community engagement?

Building trust through community engagement is multifaceted. Executives and officers cannot build community trust sitting behind a desk. It is imperative departments adopt a culture of servant leadership and hire officers who are service minded professionals. Law enforcement must work in partnership with, not at the expense of, the community. There is no room for an “us vs. them” attitude. Fruitful community engagement is dependent on being present and every encounter with a member of the community serves as an opportunity to connect and develop a relationship. Initiatives like police athletic leagues and food drives, as well as non-traditional programs that foster community-law enforcement interaction are valuable. Police should look to engage with leaders in the community beyond the conventional religious, nonprofit, and business leaders. Activists, musical artists, athletes, and other community leaders and influencers can help develop strong law enforcement-community relationships. Finally, ensuring the department looks like the community it serves and hiring officers from the community is one of the best ways to create trust and respect.

- b. Are there particular approaches to community engagement that have proven less effective or counterproductive?

Reducing or pulling back on community/relational policing initiatives during tumultuous times is one approach that is counterproductive. Law enforcement must work tirelessly – in both good times and bad – to build strong relationships with the communities they serve. It is much easier to navigate a crisis and effect change when the public trusts law enforcement and knows their concerns will be taken seriously. Retreating from the community during challenging times reinforces an “us vs. them” mentality and frays the relationship going forward.

2. When the U.S. Department of Justice Civil Rights Division investigated the Ferguson Police Department, it found that excessive ticketing and drivers’ license suspensions for unpaid fines and fees contributed to a culture of distrust and inflicted unnecessary hardship on residents. Suspending a driver’s license for unpaid fines and fees can make it impossible for a person to hold down a job, creating a vicious cycle. In your view, should drivers’ licenses be suspended for non-driving reasons? Please explain.

Drivers’ licenses should not be suspended for non-driving reasons, such as the inability for

an individual to pay a fee or fine. Suspensions should be exclusively for engaging in behaviors that represent a public safety threat (i.e. DWIs, excessive speeding, etc.) and traffic-related law enforcement activities should focus primarily on preventing these behaviors. Considering COVID-19 and the recent civil unrest, it will be even more important going forward to ensure law enforcement resources are being used efficiently and properly. Looming budget reductions will require resources be directed to activities that have a significant impact on combatting crime and enhancing public safety. Furthermore, stopping suspensions due to unpaid fines and fees may limit unnecessary interactions with the public, including members of disenfranchised communities.

Hearing on Police Use of Force and Community Relations
Questions for the Record
June 23, 2020

QUESTIONS FROM SENATOR FEINSTEIN

Questions for Chief Acevedo

1. Chief Acevedo, when you appeared before the House Judiciary Committee on June 9, 2020, you said: “There is no denying that changes in policing must be made.” (Statement of Chief Art Acevedo, House Committee on the Judiciary Hearing Transcript, June 9, 2020). You added: “We must acknowledge law enforcement’s past contains institutional racism, injustices, and brutality. We must acknowledge policing has had a disparate treatment and impact on disenfranchised communities, especially those of color and poor communities.”

a. Why is it important to acknowledge that there are systemic problems that need to be addressed rather than just a few “bad apples”?

Without acknowledging the systemic issues that exist, it will be impossible to understand the full scope of the problem. Focusing on a “few bad apples,” will not address the underlying issues that permit these individuals to become police officers and prevent them from being held accountable. Without identifying the systemic issues, it will be nearly impossible to implement meaningful and sustainable reform.

b. What are the most pressing systemic issues in policing today?

The most systemic issues are a lack of transparency and accountability. It is important to note that these are not just policing issues. They permeate the entire criminal justice system. The criminal justice system is deeply interconnected with police, the courts, judges, prosecutors, and probation, amongst other entities. Injecting transparency and accountability into every facet of the criminal justice system is long overdue. The public has just as much of a right to know what goes on behind closed doors relative to judges and district attorneys as they do with the police. Ensuring equity in public safety requires solutions that encompass the entire criminal justice system. For example, the theory being pushed by some reform minded judges and prosecutors that it is unconstitutional to hold offenders, even murder suspects, pre-conviction is a direct threat to community safety.

c. What should Congress do to remedy these systemic issues?

In order to remedy these systemic issues, Congress must take an approach that is informed, measured, and responsible. This is not the time for knee jerk reactions or absolutes. We must listen to the communities plagued by these systemic issues, learn, and then act. Any proposed reform must be thoughtfully vetted to ensure it is sustainable, will have a meaningful impact, and will not make it impossible for

law enforcement to ensure public safety. Finally, reforms must be made to address challenges across the criminal justice system, not just law enforcement.

2. George Floyd's death is just the latest example of the dangerous practice known as a chokehold, where pressure is applied against a person's neck to incapacitate them, often by using a variation on the chokehold known as a carotid hold. Some jurisdictions have banned the use of chokeholds, but that has not always prevented their practice.

For example, in 1993, the New York City Police Department banned the use of chokeholds, yet, from 2014 to 2020, the New York City Civilian Complaint Review Board reported 996 allegations from people who claimed to have been subject to chokeholds.

a. Why do you think law enforcement officers continue to use this dangerous technique to incapacitate people, and what can be done to stop it?

Not every law enforcement agency has banned the use of chokeholds. For those that still permit their use, it should be clear that it is only a technique that can be used if an officer is in a situation where deadly force is appropriate and justifiable. In order to further limit their use, departments may wish to consider ceasing to train their officers on the technique.

It's also important that departments ensure their use of force policies prioritize the sanctity of life. Use of force policies should be consistently reviewed and updated, as necessary, to ensure they integrate all relevant best practices, require the use of de-escalation techniques, and establish a duty to intervene. We must reinforce skills to slow down decision making to ensure any action taken does not unnecessarily endanger fellow officers and the public.

Regular and frequent in-service training provides an important opportunity to refresh officers on the basic tenants related to the use of force—time, distance, number, cover, and concealment. Additional opportunities for training are always welcomed. The current fiscal environment has led to law enforcement budget cuts, which has led to a reduction in training.

b. What should law enforcement officers do to safely detain people without using abusive techniques like chokeholds, and how do we ensure that they do that?

When responding to a scene, officers must consider the following: time, distance, numbers, cover and concealment. When detaining an individual, training on de-escalation and use of less than lethal tools are valuable assets in preventing chaotic situations from spiraling out of control. In order to ensure that law enforcement officers are equipped to resolve situations as safely and peacefully as possible, we must ensure use of force policies are up to date and that departments have adequate funding to make the necessary investments in developing and executing the required training.

Questions for the Record from Senator Charles E. Grassley
U.S. Senate Committee on the Judiciary
“Police Use of Force and Community Relations”
Submitted on June 23, 2020

Chief Art Acevedo

1. For the past two years, Senator Warner and I have been investigating the fatal shooting of Bijan Ghaisar, an unarmed motorist by the U.S. Park Police. Our investigation has found that he died because Park Police officers used poor de-escalation tactics, and an inappropriate, aggressive use of force.

- a. How much of an effect can proper de-escalation policies and training have in preventing violence and death at the hands of law enforcement?

Proper de-escalation policies and training can have an enormous impact in resolving situations as safely and peacefully as possible. The use of these techniques provides another opportunity for officers to slow down their decision making and ensure any action they take does not unnecessarily endanger members of the community, suspects, and other officers.

- b. Is there a need for law enforcement agencies to revise their use of force policies? Generally speaking, what changes would you recommend?

Law enforcement agencies need to ensure their use of force policies are up to date, incorporate relevant best practices and preserve the sanctity of life of all individuals. Agencies need to have comprehensive and clear use of force policies that contain lawful responses to resistance and promote accountability. While there is no national standard for the use of force, any robust policy should contain a duty to intervene and require the use of de-escalation tactics and techniques, when safe and feasible, under the totality of the circumstances, in order to gain voluntary compliance.

2. Police officers should be seen as not just enforcers of the law, but as neighbors and members of the community. However, many cops don't live in the areas they patrol, so a natural divide and mistrust can form.

- a. How can we encourage more engagement and trust between police officers and those they patrol?

We can encourage more engagement and trust between police officers and the communities they serve by adopting a culture of servant leadership and hiring officers who are service minded professionals. Law enforcement must work in partnership with, not at the expense of, the community. There is no room for an “us vs. them” attitude. Fruitful community engagement means being present and every encounter with a member of the community serves as an opportunity to connect and develop a relationship.

Ensuring our departments look more like the communities we serve helps build trust and confidence. Officer recruitment can be challenging; however, a concerted effort to recruit from within the community is valuable. Their unique perspectives and insights help shape a department and several MCCA member agencies are now minority majority. Departments may wish to consider residency requirements—where permitted by state and local law—or residency incentives to assist with recruiting members of the community to serve as law enforcement officers.