

OTG Forum Identifies Opportunities for Engagement on Transparent Policing and Accountable Law Enforcement Advocacy

“The data helps us balance the playing field” – grassroots organizers speaking at OTG’s January 27, 2016 town hall

On January 26, 2016, OpenTheGovernment.org hosted a Town Hall event attended by open government organizations, data specialists, civil right groups, grassroots organizers, and criminal justice proponents. The event brought together civil society leaders to discuss efforts to collect and use data to promote greater accountability in law enforcement, and included a panel discussion featuring speakers with a range of experience working to obtain and provide access to data, promote criminal justice policy reforms, and to use data at the grassroots level in advocacy campaigns (see [below](#) for more on the panelists).

The event addressed some of the core data-related challenges to criminal justice advocacy work, such as the lack of comprehensive information needed to promote reforms, including data on law-enforcement-involved shootings and on use-of-force incidents. Importantly, it provided a forum to build bridges and to develop strategies to enhance collaboration among diverse groups working to achieve similar goals. This event is a first step to encourage more coordinated campaigns to promote greater accountability for our law enforcement institutions.

The Town Hall began with a discussion, led by Sakira Cook (Leadership Conference), of the [Deaths in Custody Reporting Act](#) (DCRA) – originally passed in 2000 and re-authorized at the end of 2014. This statute requires states receiving federal criminal justice assistance grants to report, by gender and race, all deaths that occur in law enforcement “custody”, which includes while a person is being detained or arrested. It allows the Attorney General to withhold up to 10% of federal funds for law enforcement operations in any state that fails to comply with the reporting requirements.

Kanya Bennett (ACLU) noted that since the re-authorization of the DCRA, it has become clear that guidance on implementation is necessary to ensure compliance by police departments across the country. This guidance should indicate: the definition of custody; what constitutes noncompliance; how penalties will be applied; and clear instructions and timelines for making information public. As the DCRA currently stands, the speakers pointed out, federal law enforcement agencies annually gather and report these deaths to the US attorney general, who in turn has two years to analyze the data, determine if and how it can be used to reduce the number of such deaths, and file a report to Congress. This means that the public has no way of knowing the results of the quarterly data collection on a timely basis. Without timely, reliable, and accessible data, it is impossible to identify those states failing to report, or not reporting correctly. As noted, the DCRA does not require *mandatory* penalties for failure to comply. Instead, penalties are issued at the discretion of the Attorney General, and perhaps not coincidentally, only a relatively small number of police departments comply.

Again, a clear, uniform definition on what constitutes a “death in custody” is also sorely needed, so that it is not left open to interpretation by different police departments. Criminal justice and civil rights groups, such as the ACLU and the Leadership Conference, have asked the DOJ’s Bureau of Justice Assistance to develop such guidance.

The Police Reporting Information, Data, and Evidence Act (PRIDE Act), a recent bill, seeks to address similar issues. The bill, introduced in the Senate by Sen. Barbara Boxer and Sen. Cory Booker, and in the House by Rep. Joaquin Castro, creates grants for states and Indian tribes and, in return, requires recipients to record and report to the Justice Department: every case in which an officer shoots or causes serious bodily injury against a civilian; every case in which a civilian shoots or causes serious bodily injury to an officer; and basic demographic data for all victims. As with the DCRA, the proposed legislation falls short of requiring mandatory data collection. Unlike the DCRA, it does not include even the possibility of penalties for failing to report. In this sense, the speakers noted that it would be a step backwards from the DCRA, which at least allows the imposition of such penalties.

The Administration also could take action to ensure comprehensive data collection and reporting on police shootings, and on other law enforcement activities. The current Administration approach -- making programs voluntary -- has led to limited results. The [White House Police Data Initiative](#) encourages police departments to open up data on uses of force, police pedestrian and vehicle stops, and officer-involved shootings, and involves [26 police departments](#) across the country. Since May 2015, all participating police departments have committed to opening key data on policing, but only seven of these cities have provided data on [officer involved shootings](#). Moreover, seven of these cities have yet to make *any* data [available](#) (one city, Hampton, VA, provides a website that is NOT available to the public) and the [data provided](#) is not uniform, comparable, or easily searchable, and some of it is not data on policing.

When it comes to existing voluntary national databases, key data categories are also missing. The National Incident-Based Reporting System (NIBERS), for example, does not account for persons with disabilities or undocumented persons.

Beyond these voluntary programs, there is more the Administration can do to mandate such reporting. Through Title 6 of the 1964 Civil Rights Act, the federal government has the authority to control grants and tie them to reporting and data collection on policing. The federal government could also re-direct funding excessive, [militarized police equipment](#) and allocate it, instead, to data collection and reporting programs. This re-allocation would provide the capacity and technology for more systematic record keeping.

The Justice Department (Office of Justice Programs) should collect and publish data on arrests and police stops – data that is needed to prove what is already known, that racial profiling is taking place. The ACLU has been advocating that the DOJ make such reporting a condition for federal criminal justice assistance grants.

The discussion turned to data collection by non-government organizations. Sunlight Foundation is engaged in an effort to provide a source of consolidated criminal justice data – amassing an inventory of

public and privately-produced criminal justice data. Damian Ortellado spoke about how he has helped compile a spreadsheet that represents the [inventory of data](#) collected from all 50 states, the District of Columbia, and the federal government. Damian highlighted that everything produced by Sunlight is open source (although much of the data compiled in the inventory is in its original PDF form), and that the aim of the initiative is for people to use the research or reporting as a resource, and also to encourage the community to contribute to the growing database.

Scott Roberts, of the organization ColorofChange.org, spoke about ways that data has been pivotal to grassroots campaigns. Scott discussed the trajectory of data access under this Administration. The Obama Administration has released a substantial amount of important data relating to education access and equity collected by the Department of Education as part of the [Civil Rights Data Collection](#) (CRDC). Gaining access to this data was a big win for civil rights proponents, and the information has been fundamental in grassroots campaigns that ColorofChange.org and other organizations have been leading, such as work to dismantle the school-to-prison pipeline (policies and practices that push schoolchildren out of classrooms and into the juvenile and criminal justice systems). The CRDC data has helped grassroots organizers produce evidence-based research, boost awareness-raising activities, and has helped with messaging campaigns. It gives local organizers a strong sense of legitimacy and greater capacity in their work. At the local level, it is empowering to be able to enter into a dispute with a school system with evidence-based data in hand. At a national level, it helps identify where there are gaps in the data, and where the focus should be in terms of prioritizing campaigns. Data can help level the playing field between advocates on the ground and the authorities – it shifts the balance of power.

Access to data on law enforcement, like that available through CRDC, would have an enormous impact on advocacy campaigns. It is difficult to advocate for police accountability in the face of the power of law enforcement institutions. Comprehensive data would help neutralize the influence of law enforcement interests, such as the Fraternal Order of Police (FOP). Such interests are pushing back against data collection policies, because they understand that it would shift the balance of power.

Other areas where there is a lack of data include law enforcement budgeting and financial information, and criminal prosecutions. Some grassroots groups engaged in divestment campaigns call for shifting resources away from security and towards social programs. These efforts can have a significant impact, but more comprehensive data, such as data on civil forfeitures, would increase their effectiveness. Better data on criminal prosecutions, such as information on prosecutorial discretions, is also sorely needed to promote criminal justice policy reforms.

The discussion turned to body cameras, and issues relating to information access and privacy. Damian Ortellado noted that data the Sunlight Foundation has collected includes a vast array of information that raises privacy concerns, notably correctional data that includes personal information. This example highlights the need for clearer guidelines for managing such data, and applies to data obtained through body cameras. From the perspective of organizations like ColorofChange.org, there is concern that body cameras will intensify police surveillance of communities, and create problems where there are no standards for releasing such information.

The Leadership Conference, together with a broad coalition of civil rights, privacy, and media rights groups, developed shared [principles](#) around the use of body cameras. They also developed a [policy scorecard](#) that evaluates the body-worn camera policies currently in place at more than two dozen police departments across the country, including policies on personal privacy, access to footage, and whether these policies are publicly available.

The DOJ, however, has no federal policy requirements for police departments to adopt before they receive funding to implement body cameras. The funding should include clear requirements to protect privacy concerns and to ensure the footage is used appropriately.

The speakers noted that there are many challenges groups face at the local level when it comes to following changes in relevant policies at the federal level. It is difficult for grassroots organizations to monitor changes at the national level, and to see the direct connection between federal policies and local work. The upcoming election, however, has created an opening, where local organizers see an opportunity to put forward proposals to help set the agenda on criminal justice reform for the next administration.

The town hall then turned to the audience for questions and commentary, and led to a discussion about the importance of waging a campaign that connects the national level policy work to the local-level advocacy campaigns. Participants mentioned the [Invisible Institute's Citizens Police Data Project](#), highlighting the work they are engaged in to obtain access to information on police abuses in Chicago, and raise awareness of these abuses. Attendees spoke about the need to take-on powerful actors that are working to block access to police data (such as the Fraternal Order of Police), as well as the importance of shaping the debate and editorializing about these issues.

The event led to a number of action items, and ideas on how to enhance collaboration among civil society actors working on this issue. The group identified where the openness community can add important value to the movement for open data and accountability for law enforcement.

One specific area where the openness community can add expertise is on open records and access to information/FOI laws, notably at the state and local level. Freedom of Information (FOI) and open records laws vary across states, making it difficult for nation-wide campaigns to incorporate FOI into their advocacy strategies. Connecting groups with state-level FOI expertise (such as Society for Professional Journalists, Reporters Committee on Freedom of the Press, National Freedom of Information Coalition, and others) with those working at the grassroots level, could considerably advance the capacity of grassroots organizations working on criminal justice efforts. The capacity of such openness groups is an important consideration, though.

The openness community also can help to pressure the federal government to take action on mandatory police reporting and data collection. One action item discussed was organizing a sign-on letter to the White House asking that the Department of Justice develop clear guidelines on the implementation of the [Deaths in Custody Reporting Act](#) (DCRA). The ACLU has been working to promote the development of such guidelines; this advocacy requires a lot of effort, and could benefit from input from a wide-range of civil society with expertise on open government policies. This is an area where OTG could help

coordinate to leverage that support, raising awareness of the issue and building support for the campaign.

The event was an important step towards building avenues for greater collaboration on the intersection of open government, data transparency, and criminal justice advocacy work. OTG will continue to coordinate with our coalition members, colleagues working on human rights and civil liberties, and new partners to pursue opportunities to advance open data policies and public accountability for law enforcement.

Town Hall Panelists:

Kanya Bennett serves as a Legislative Counsel in the ACLU's Washington Legislative Office. In this capacity, Kanya advances criminal justice reform at the federal level. Kanya also co-chairs a law enforcement reform working group and engages in efforts to promote better data collection and reporting by police departments and transparency and accountability when police use force. Ms. Bennett helped develop ACLU recommendations for the White House Task Force on 21st Century Policing, with the ACLU putting forward a recommendation to collect data on a range of police and citizen encounters – from stops and arrests to nonfatal and fatal police shootings.

Sakira Cook serves as Counsel in the public policy department of [The Leadership Conference on Civil and Human Rights](#) – a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States. Ms. Cook facilitates the development of a federal policy agenda on reform of the criminal justice system for a broad coalition of civil and human rights groups and monitors, analyzes, and advances current federal civil rights issues and legislation in several areas, including law enforcement reform and accountability, sentencing and prison reform, and reentry. Ms. Cook is also co-chair of the law enforcement reform working group of the Justice Roundtable.

Damian Ortellado is a research analyst at the Sunlight Foundation focusing on criminal justice data research. Damian works on Sunlight's [opening criminal justice data initiative](#) – an effort to amass an inventory of public and privately-produced criminal justice data. Mr. Ortellado has helped compile a spreadsheet that represents the inventory of data collected from all 50 states, the District of Columbia, and the federal government. The aim of the initiatives is for people to use the research or reporting as well as contribute to growing database.

Scott Roberts is a Senior Campaign Director of Criminal Justice for Color of Change. Mr. Roberts has collaborated with local grassroots organizations across the country on issues of criminalization. In addition, he led trainings for over 1,000 organizers on school-to-prison pipeline issues over the last 4 years. In 2013, he co-founded Freedom Side, a national network of youth of color organizers focused on racial justice issues.

Moderator:

Patrice McDermott is the Executive Director of OpenTheGovernment.org, and has led the coalition since July 2006. Dr. McDermott is the author of *Who Needs to Know? The State of Public Access to Federal*

Government Information. She was inducted into the National Freedom of Information Act Hall of Fame in 2001, and is a frequent speaker on public access and open government issues.

The Town Hall event was made possible by the generous support of:

- The Ford Foundation
- The CS Fund
- Open Society Foundations
- Rockefeller Brothers Fund
- The Scherman Foundation
- Bauman Foundation
- SR Mott Foundation (through Philanthropic Ventures Fund)