

FRIDAY, SEPTEMBER 13, 2019

CONVERSATIONS ON POLICING TECH:  
**REGULATING POLICING TECHNOLOGIES  
WITH MICROSOFT PRESIDENT BRAD SMITH**

FALL 2019 SALON SERIES



THE POLICING PROJECT

### **About the Policing Project Salon Series**

As part of our ongoing work to help promote the ethical use of policing technology, the Policing Project is hosting a series of closed-door salons to work through some of the most difficult questions we face. Made possible through support from Microsoft, the salons enable us to vet our projects and discuss pressing issues around law enforcement's use of technologies with a diverse set of experts, including privacy advocates, technology vendors, police chiefs, academics, legal experts, community leaders, and government officials.

### **About the Policing Project**

We partner with communities and law police to promote public safety through transparency, equity and democratic engagement.

Our work focuses on front-end, or democratic, accountability — meaning the public has a voice in setting transparent, ethical, and effective policing policies and practices before the police or government act. The goal is to achieve public safety in a manner that is equitable, non-discriminatory, and respectful of public values.

For more information, visit [www.PolicingProject.org](http://www.PolicingProject.org)

*Pictured on the cover: (from left) Policing Project Faculty Director Barry Friedman, Microsoft Senior Director Carol Anne Browne and Microsoft President Brad Smith.*

**The report was written by Policing Project Technology Fellow Emmanuel Mauleon.**

# EVENT DESCRIPTION AND REVIEW

In September 2019, we kicked off the Policing Project's Tech Salon Series. The Salons, supported by a grant from Microsoft, enable us to vet our projects and discuss pressing issues with a diverse set of voices in the field, including privacy advocates, technology vendors, policing and community leaders, academics and legal experts, and government officials.

For the inaugural salon, we welcomed Microsoft President Brad Smith and Microsoft Communications Director Carol Ann Browne, authors of the book, *Tools and Weapons: The Promise and Peril of the Digital Age*. The book provided the perfect springboard to tackle a number of issues surrounding the use by policing agencies of emerging technologies. The core idea of the book is that although new technologies can be used for good—including increasing public safety—these tools also present threats to important values such as personal privacy, racial justice, and the exercise of First Amendment rights. What is needed is meaningful transparency and regulation to ensure that these technologies are used in responsible and ethical ways. This aligns perfectly with the Policing Project's mission on policing technologies.

By speaking about Microsoft's own struggles around questions surrounding transparency, accountability, and both industry and government regulation, Smith and Browne set the stage for many of the broader issues we hope to address through our work and several of these salons.

The conversation centered on several big picture questions:

- How do we balance police use of technology to enhance public safety against privacy risks?
- Is banning certain uses of technology the most effective or useful way to regulate the field?
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- How do we weigh the need to keep some policing methods secret against the desire for transparency and accountability?
- What are the guiding principles that could guide future conversations around law enforcement use of emerging technologies?

There were some points of consensus, and many disagreements, around how to answer the above questions. Highlights included:

- In the context of policing, even the concept of "public safety" is not a neutral or generally agreed upon term. Participants noted that, throughout this country's history, achieving the public safety of some (typically white, affluent Americans) often has come at the expense of others (typically people of color and religious and political minorities). Similarly, addressing the perceived safety of some communities often has led to the increased surveillance of others.

(cont.)



Policing Project Faculty Director Barry Friedman, NYPD Commissioner James O'Neill and Microsoft President Brad Smith.



Policing Project Executive Director Farhang Heydari and former Massachusetts Secretary of Public Safety Kathleen O'Toole.



Vera Institute President Nicholas Turner, Ford Foundation President Darren Walker and Hal Hess, formerly of American Tower.



Policing Project Senior Program Manager Mecole Jordan and Burlington Police Chief Brandon del Pozo.



Jameel Jaffer of the Knight First Amendment Institute at Columbia University and Janet Haven from Data & Society.

- Some participants raised the possibility that some police uses of tech may be less controversial, such as using facial recognition to find a known terrorist during an impending threat. Even here, though some cautioned that decision-points that occur prior to the use of technology can mask bias, even in these extreme cases (e.g., who decides who is on a terror watch list, and what criteria do they use?)
- There were shared concerns about how technologies could reproduce or exacerbate existing biases in policing. One participant noted that, beyond racial and socio-economic disparities, the development and utilization of policing technology already is skewed toward low-level street crime, yet rarely is there discussion of law enforcement using information gathering technology to target financial or white collar crimes.
- When discussing whether a particular technology should be banned, the onus often is on the public to prove that a particular technology is dangerous or could be misused. Several participants questioned this presumption, and suggested that it be flipped—the onus should be on vendors to show that their technologies not only are safe, but that they have built in the tools to make them transparent and accountable to the communities in which they will be deployed.

- There were hard questions about how much community input and engagement is necessary to serve as an appropriate check on law enforcement use of technology. Some suggested that democratic bodies, such as city councils, may not adequately account for the harms imposed by technologies on minority communities. Others expressed a desire that community input not be limited to adoption of particular technologies, but be used to inform the design process.
- Lastly, there was a critical discussion about the urgent need for transparency, both from law enforcement agencies surrounding their use of tech, and for tech vendors as well. There was a general consensus that technology vendors must make their products testable—whether for claims of accuracy, such as facial recognition, or for privacy impacts, such as body-worn cameras and automated license plate readers.

The conversation was nuanced, wide-ranging, and did not conclude with widespread agreement by all participants on the best way forward. There was, however, a moment of consensus near the end of the discussion, which helped set the stage for future discussions. Participants acknowledged that both tech companies and law enforcement agencies may be uneasy giving up the authority that comes with greater transparency. It is important, however, that tech companies and law enforcement bear in mind the value of increased legitimacy and community trust that accompanies greater accountability. ■

Thank you to the Microsoft Corporation for its generous support of this event.

# ATTENDEES

**Joseph Bateman**, Associate, Investments, Luminata

**Carol Ann Browne**, Senior Director, External Relations and Communications, Microsoft, and co-author of *Tools and Weapons: The Promise and the Peril of the Digital Age*

**Jennifer Carnig**, Senior Vice President, Spitfire Strategies

**Darius Charney**, Senior Staff Attorney, Center for Constitutional Rights

**Brandon del Pozo**, Chief of Police, Burlington Police Department

**Andrew Ferguson**, Professor of Law, University of the District of Columbia David A. Clarke School of Law

**Barry Friedman**, Jacob D. Fuchsberg Professor of Law and Affiliated Professor of Politics, and Faculty Director, Policing Project at New York University School of Law

**Janet Haven**, Executive Director, Data & Society

**Hal Hess**, former Executive Vice President, International Operations, American Tower Corporation

**Farhang Heydari**, Executive Director, Policing Project at New York University School of Law

**Jameel Jaffer**, Executive Director, Knight First Amendment Institute at Columbia University

**Mecole Jordan**, Coordinator, Grassroots Alliance for Police Accountability (GAPA), and Senior Program Manager, Policing Project at New York University School of Law

**Rachel Levinson-Waldman**, Senior Counsel, Liberty and National Security Program, Brennan Center for Justice

**Lori McGlinchey**, Director, Technology and Society, Ford Foundation

**Helen Nissenbaum**, Professor of Information Science, and Director, Digital Life Initiative at Cornell Tech

**James O'Neill**, Commissioner, New York City Police Department

**Kathleen O'Toole**, former Chief of Police, Seattle Police Department; former Police Commissioner, Boston Police Department, and former Secretary of Public Safety, State of Massachusetts

**Jason Schultz**, Professor of Clinical Law, Director, Technology Law & Policy Clinic, and Co-Director, Engelberg Center on Innovation Law & Policy at New York University School of Law

**Frank Shaw**, Corporate Vice President of Communications, Microsoft

**Brad Smith**, President, Microsoft, and co-author of *Tools and Weapons: The Promise and the Peril of the Digital Age*

**Katherine Strandburg**, Alfred B. Engelberg Professor of Law, and Faculty Director, Information Law Institute at New York University School of Law

**Kara Swisher**, Co-founder and Editor-at-large, Recode, and Producer and Host, Recode Decode and Pivot podcasts

**Scott Thomson**, Chief of Police (Ret.), Camden County Police Department, and President, Police Executive Research Forum

**Nicholas Turner**, President and Director, Vera Institute of Justice

**Nina Vinik**, Program Director of Gun Violence Prevention & Justice Reform, The Joyce Foundation

**Darren Walker**, President, Ford Foundation

