

COMMUNITY POLICING: TENTATIVE STEPS TOWARDS TRUE RECONCILIATION

INAUGURAL LECTURE
DELIVERED AT RHODES UNIVERSITY
on 6 April 1995

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B Com, LLB (Rhodes) PhD (Cape Town)
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Community Policing:
Tentative steps towards true reconciliation

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COMMUNITY POLICING: TENTATIVE STEPS TOWARDS TRUE RECONCILIATION

Mr Vice-Chancellor, Ladies and Gentlemen,

The topic I chose for tonight's lecture is 'Community Policing: Tentative Steps Towards True Reconciliation'. I intend combining two fields of interest which have taken up most of my teaching time and research energy in recent years, conflict management and community policing, and I hope to provide an acceptable theoretical base upon which a version of community policing suited to the needs of the Eastern Cape Province can be formulated.

In preparing for this lecture I referred to policies developed in other countries, but the views expressed hereafter have in many cases been drawn from, developed and updated by ordinary people -- city and small town community members, together with their local police members -- during workshops conducted throughout the province in the last two years.¹ In many respects I have merely co-ordinated and given structure to the views expressed at such workshops.² I have also referred to local literature, policy documents emanating from the police, parliamentary sub-committees, civic organisations and NGO's and three surveys conducted in Grahamstown and surrounding towns.³

Half-way through writing this lecture, I said to myself, 'You are supposed to say something about the law: have you done so?'. The answer was that I had not, in any event, not as law is traditionally understood. We believed, as students, that the aim of a law degree at Rhodes was to equip one to be an advocate, to provide an undergraduate general education and a postgraduate education in the law. Our lecturers made us read cases, lots of them, with a view to developing our critical faculties and thought processes. The emphasis was to build a residual base of general legal knowledge. One's practical training and specialisation in certain aspects of the law would follow later. In retrospect I can now say that there was a strong emphasis on law as a body of rules and procedures. We tended to accept the law as it was, or as set out by the Romans and the Roman-Dutch writers, and, provided that we had authority for a proposition, we did not concern ourselves too much with the qualitative results and the effect of the law in a modern society.

The teaching of law has undergone a minor revolution since then and now the provisions of the Interim Constitution⁴ have given legal education fresh impetus. I still hold to the idea that a general education is an important foundation for a qualitative legal education, but we can no longer afford to teach law in an ivory tower, isolated from the societal needs. We have to examine whether our legal rules are suitable for our modern society. At Rhodes we now concentrate more on producing graduates for the attorneys profession and we have responded to calls for more practice-orientated subjects and for flexibility in degree curricula. Students can now select a number of courses in order to structure a degree according to their own interests and expertise. And I am certain that we will soon be offering undergraduate law degrees at Rhodes.

The nett result is that today we are enjoined to equip lawyers not only with legal knowledge and the ability to fashion fine arguments on technical issues, but also the skills and ability - call it entrepreneurial ability, if you like -- to use that legal knowledge to recognise opportunities which present themselves.

This new trend in legal education allows me to include policing policy and dispute resolution systems design as part of a legal academic's work. It will take some time, however, for lawyers to accept that the responsibility of legal academics is not geared solely towards the legal professions and the courts, but should also extend to areas outside the formal practice of law.

I'm not too sure that my professors of law would have agreed with my approach, but I would like to acknowledge the influence they had on my academic development. I doubt whether they thought that I'd ever be an academic, but Professor Kerr, who is here tonight, Professor Beuthin and Professor Jones all managed to convey to me an enthusiasm for teaching law. To Professor Beuthin company law was not just information from a statute: he loved the concepts which underpinned it. He made us think about the subject, although I'm convinced that I passed the course only because I made sure that he saw me patting his dogs. I valued Professor Kerr's after sales service, his willingness at all times to set aside what he was doing in order to help one. And I am extremely grateful for the guidance he gave me, in teaching, but especially in research, on my return to Rhodes. But I probably would not have

become a lawyer were it not for Professor Jones's Legal Theory I lectures. He tricked me into believing that law was fun. He brought law to life with fascinating examples. My hopes suffered a set back, however, when, in my third year, Professor Jones noticed that I was staring out of the lecture room window overlooking the botanical gardens. He interrupted my day dream with, 'Mr Midgley, I predict a bright future for you at Rhodes -- as a botanist.' I pay tribute to these gentlemen and I hope that I have succeeded in some way to incorporate these values in my own teaching.

INTRODUCTION

As you know, South Africans feel strongly about policing issues. For many years the police served as the government's instrument in upholding its apartheid policy. The police's prime function was to apply the maxim, taken from Roman times, that the safety of the state is the supreme law. The police's focus was to maintain law and order, to serve the state, and while this also caused some sectors in our society to feel safe and protected, police in essence saw themselves as protecting the state against certain communities and individuals.

Because of the police's political role, its Draconian powers and its lack of accountability to the broader populace, instances of police bullying, shootings, hit squads, massacres, dirty-tricks and other human rights abuses abound. It is not necessary here to recount such issues in detail. Few will disagree that police conduct was for decades a significant cause of hurt and suffering in our country, particularly among black people. Police were unwanted in the townships and township societies created their own structures for regulating societal behaviour. Both the police and anti-apartheid structures considered the other to be the enemy, leading to a dispute which brought about disorder, the exact opposite of what they were designed to achieve.

Times are different now. We are in an era of reconciliation and nation-building, of healing the wounds. At a national level politicians have set the platform for communities to become reconciled and former enemies now have the opportunity to make peace. We should now look to methods of readmitting the police into our communities and for society to accept them.

The solution offered by policing theorists, and endorsed in the Interim Constitution, is 'community policing'. However, opinion leaders are unable to agree on its meaning. Some say that it involves softer, more humane police policy and methods; others that it means 'policing by the community'. There are also other versions. Despite fundamental differences in principle in some cases, everyone is in broad agreement that modern policing methods should be more community-sensitive and that communities should participate in securing their own protection and safety. However, the nature of the participation, and the extent thereof, remain open to discussion.

There are many reasons for the discrepancies, but I suggest that we need first to become more skilful in dealing with our differences. We need to look behind persons' positions to the interests which those positions intend to serve; we need to recognise the distinction between relationship issues and substantive issues, and assess their relative importance; and we need to recognise that power as a negotiating strategy should be used only as a last resort. We need to isolate the purpose for implementing community policing, and design a policy and an approach with that purpose in mind. In the words of a Harvard law professor, we need to fit the forum to the fuss.

APPROACHES TO DISPUTE RESOLUTION

Ury, Brett and Goldberg⁵ state:

'Interests, rights, and power then are three basic elements of any dispute. In resolving a dispute, the parties may choose to focus their attention on one or more of these basic factors. They may seek to (1) reconcile their underlying interests, (2) determine who is right, and/or (3) determine who is more powerful.'

Lawyers are traditionally concerned with the second option, which is 'to rely on some independent standard with perceived legitimacy or fairness to determine who is right'.⁶ Resort is had to an independent dispute resolution process, whether public, using litigation, or private, in the form of arbitration.

The rights-based procedure, particularly the court process, has been used to resolve disputes between communities and police, mainly in disputes concerning individuals. However, experience has shown that litigation is neither suitable nor effective in public-order disputes or disputes concerning the legitimacy and acceptability of the police, for such conflicts are not predominantly rights-based.

I will therefore focus on the other two patterns of behaviour, concentrating in particular on the following questions:

- * How do the parties behave when interacting with one another?
- * Why do parties behave in that way?
- * What is the nature of the dispute?
- * Why is community policing being implemented?
- * What should community-policing policy aim to achieve?

NEGOTIATION PATTERNS

Negotiation behaviour is influenced by two factors, maximising self-interest and maintenance of a relationship between negotiating parties. Theorists identify, on a consistent basis, two major patterns of negotiation behaviour, competitive (or adversarial) and co-operative (or problem-solving).⁷ These patterns of behaviour are outcomes of a negotiator's decision in each case, whether conscious or otherwise, to trade off self-interest and relationships. Competitive negotiators value self-interest more highly than the relationship, while co-operative negotiators tend to consider maintaining the relationship as part of a satisfactory outcome.

THE OLD ORDER: COMPETITIVE BEHAVIOUR

Characteristics

Competitive behaviour involves a win-as-much-as-you-can approach, one-sided and confrontational, with negotiators making high demands and reluctant concessions. Power, which is seen as 'the ability to coerce someone to do something he [or she] would not otherwise do',⁸ and to impose costs on the other party, is an important ingredient.

Competitive behaviour is based on the following assumptions:⁹

- * Maximise self-interest and returns in the present transaction
- * The essence of negotiation is competition: other negotiators are seen as opponents
- * The emphasis is on winning, not on resolving the dispute
- * Negotiation is seen as a game of chess or a military manoeuvre: one employs strategies and tactics in order to win
- * One must control the process for effective manipulation
- * Resources are limited
- * Negotiations are independent transactions which do not impact upon other negotiations
- * The needs, interests, concerns and attitudes of opponents are not legitimate, except when they can be used to maximise one's own return
- * One should co-operate only when such behaviour will maximise one's own returns
- * One must win as much as you can, but most importantly, more than the other side.

The old order

See Table 1 and Table 2. For many decades two types of institutions were involved in regulating activities within our society:

- * state ordering institutions, and
- * community-based ordering institutions.¹⁰

The police and the defense force fall into the former category. In the latter we find traditional African criminal justice systems under the auspices of chiefs in the rural areas; township ordering processes, such as anti-crime committees, people's courts, Makgotlas, gangs and spontaneous assemblies;¹¹ and in other areas, neighbourhood watch schemes and security companies.

Both types of policing institutions had an authoritarian and violent style. The prime objective of the police was safety and security of the state -- protecting the state against a total onslaught by many of its citizens. Safety and security of the people and of individuals, although important, was secondary to the preservation of law and order. There was also a clear sense that white life-styles had to be protected against the ideas and conduct of blacks. As a result the white community was adequately policed and relatively comfortable with the security situation. Where it was unhappy with the quality of policing on offer, the white community supplemented its policing needs by participating in neighbourhood watch schemes, acting as reservists and hiring its own policing services from private security firms.

The policing in the black community, on the other hand, was most inadequate. Black people were often the victims of police action and in this respect they were in fact over-policed. Yet, when it came to personal safety and security, these communities were under-policed and under-resourced. Not that the police had an easy task in this regard. Black communities were generally unwilling to co-operate with the police on policing issues for the South African Police was not regarded by township communities as being a legitimate law-enforcement agency. The police did not exercise its function with their consent. As a result of their experiences, township communities established their own policing infrastructures,

parallel to those provided by the state, not only to supplement inadequate policing, but also to indicate opposition to the prevailing systems of social ordering. Township ordering structures were in fact sites of political struggle.

We now have answers to three of the questions raised above:

- * What is the nature of the dispute? The legitimacy of the ordering institution, the methods employed by the ordering agencies.
- * How do the parties behave when interacting with one another? A competitive approach in its extreme form. Not just a game of chess, but in fact using excessive violence to overpower one another. Parties could not communicate their differences in a positive manner. They did not know how to deal with one another.
- * Why is community policing being suggested as an alternative? The situation was clearly not satisfactory. No society could be build without social order and a legitimate social structure. The gap between society and the police needed to be bridged. Somehow one had to get former and current adversaries to work together.

TABLE 1: THE OLD ORDER: STATE-ORDERING INSTITUTIONS

TOWNS

Law and order
Safe environment

**TOWNSHIPS
RURAL AREAS**

Law and order
Environment not safe

**COMMUNITY
CONSENT**

**NO COMMUNITY
CONSENT**

TABLE 2: THE OLD ORDER: COMMUNITY-ORDERING INSTITUTIONS

TOWNS	RURAL AREAS	TOWNSHIPS
In-house protection services	Chiefs and Headmen	Anti-crime committees
Security firms		Street committees
Reservists		Self-defence units
Neighbourhood watch		People's courts
		Spontaneous assemblies
		Makgotla Inkundhla
POLICE CONSENT	POLICE CONSENT	NO POLICE CONSENT

THE NEW POLICY: CO-OPERATIVE BEHAVIOUR

Characteristics

A co-operative approach is non-confrontational and focuses on the needs and/or interests of all the parties involved in the transaction. It uses power in a positive and creative manner by directing it towards solving the problem, instead of at the process. A co-operative negotiator makes the following assumptions:¹²

- * A qualitative result, where joint returns are maximised, is preferable to one party maximising returns at the expense of another
- * Limited resources should not be distributed on an all-or-nothing basis
- * Parties to the negotiation process are interdependent
- * The needs, interests, concerns and attitudes of opponents are relevant, legitimate and valuable in reaching a solution
- * Individual interests must be seen in a broader time and community context
- * One's behaviour must at all times be co-operative
- * The substance of the end-result is more important than the process: the solution must be fair to all parties and efficient for the community at large

Peace Committees

The first signs of changing ideas came with the drafting and signing of the National Peace Accord. Chapter 4 of the Accord contained a Code of Conduct for police and all members of the South African Police committed themselves to it. A significant feature of the Accord is its identification of the problems relating to policing issues:¹³

'[T]he perception of the past role of the police has engendered suspicion and distrust between the police and many of the affected communities. In recognition of the need to promote more effective policing, a commitment to sound policing practices and a co-operative relationship between the police and communities are necessary.'

The Accord's emphasis was to make peace and to reduce the levels of violence in our country, but the Peace Accord also served a valuable role in changing behaviour patterns, for peace committees became forums where community leaders could safely be seen to discuss issues with the police. First there was a familiarisation process, whereby representatives from a variety of institutions came into contact with police; followed by a period of more active involvement during which peace committee members, political leaders, business leaders and the police discussed arrangements for the various forms of political expression which our country experienced. These marshalling and monitoring arrangements were the first forms of joint participation between police and black communities in maintaining order.

The peace structures, therefore, provided the first real opportunity for society to become more familiar with aspects of policing and provided a successful introduction to community policing. Even though matters did not always go smoothly, the process served to illustrate that partnership policing was a possibility.

Of course the process had its limitations. If we refer to the answers identified above, we notice that Peace Committees addressed only one of the issues, namely the way in which parties communicated their differences to each other. They laid the foundation for an alternative approaches to community conflict resolution, namely that of co-operation.

Academic views

One can of course expect that police policy, and community policing in particular, would not escape the attention of the academic community. Following a conference in June 1991, a number of institutions formed a working group on community policing. Its report was

presented at a later conference, in September 1992. Amongst others, the following principles were suggested:¹⁴

- * Public oversight and accountability at an operational level
- * Police planning and strategy development should be subject to public scrutiny
- * Accountability to a broadly representative civilian structure
- * Traditional systems of local policing, such as anti-crime committees should be supported
- * The values and norms in a particular community should be recognised and accepted
- * The needs and concerns of special interest groups should be addressed
- * Resources should be fairly allocated and similar quality of service should be rendered to all communities
- * A flexible, problem-solving approach to policing

The ANC policy guidelines

Meanwhile, at its national conference in May 1992, the African National Conference adopted policy guidelines aimed at transforming the police into an organisation suited to a fully-democratic society:¹⁵

- * The police service shall respect the ideals of democracy, non-racialism, non-sexism, national unity and reconciliation and act in a non-discriminatory fashion. The police shall be non-partisan and no member of the service shall hold office in any political party

- * Policing shall be based on community support and participation
- * Police shall be accountable to society and the community it serves through its democratically elected institutions
- * There shall be a professional police code governing standards and suitability of membership to the service, and a code of conduct to which police will adhere
- * Policing priorities shall be determined in consultation with communities they serve
- * Policing shall be structured as a non-militarised service function
- * The police service shall carry out its work primarily through non-violent means
- * Policing shall be subject to public scrutiny and open debate
- * Allegations of police misconduct shall be dealt with by independent complaints and investigations mechanisms
- * Members of the service shall be entitled to form and join employee organisations, of their choice, representing their interests
- * The police shall strive for high performance of standards

New strategic plan

It is quite clear that the police policy makers decided, in the early 1990s, to employ co-operative behaviour patterns. During 1992 the government took measures to improve the police's image and service nation-wide. As agreed to in the National Peace Accord, a Police Board was established to examine police training and existing policing practices.¹⁶ Working groups entrusted with evaluating community-police relations were also brought into being. Subsequently, a number of community liaison forums were established throughout the

country.¹⁷ On 25 January 1993 it was announced that police command would be restructured, with the focus of the service being redirected to 'community support policing'.¹⁸ Foreign experts would be consulted with regard to training and to eliminate discriminatory practices.¹⁹ During May of that year, a Department of Community Relations was established, as a means of bringing the police closer to the needs of the community.²⁰ It was announced that many of the police functions would be decentralized to local and community level.²¹

The new police policy was summarised by Major General Pruis, the head of the Community Relations Division, as having five key elements:²²

- * Structured consultation between the police and different communities about local problems, policies, priorities and strategies
- * The adaptation of policing strategies and polices to fit the requirements of particular local circumstances as well as the development of a customer orientation in the rendering of service
- * The mobilization of all resources available to the community and the police to resolve problems and promote security and safety
- * Enhancing accountability to the community through mechanisms designed to encourage transparency and professionalism
- * A broadening of the policing mandate from a reactive focus on crime control to a proactive focus on the underlying causes of crime and violence

Internal briefing documents of the South African Police noted other aspects:²³

- * Improved partnership relations between the community and the police
- * Depoliticising the police

- * Internal structural developments in line with the Constitution
- * Moving from a semi-militaristic organisation to a service-rendering organisation
- * Cost-effective management of resources on sound economic principles
- * Maintenance of standards

As the approach developed it became clear that the prime focus was to gain legitimacy among civil society and that community policing was to mean 'community-supported policing'.²⁴ In terms of this model the police service will undergo extensive reform so as to conduct its activities in a more sensitive manner and with the support of the community. Policing is to be left to the professionals and control of day-to-day policing activities vests in the state. However, the police will consult with local community representatives and be accountable to these communities they serve on a formal and structured basis, whether through local authorities, consultation forums, ratepayer associations, anti-crime committees or street committees. Programmes for unannounced visits to police cells to interview prisoners are also included. In terms of this model, therefore, civic structures will play a consultative and a watchdog role. Community participation in actual policing activity, is intended to be restricted to participation as police reservists, in neighbourhood watch schemes (including certain types of anti-crime committees) and in projects such as multi-disciplinary victim aid programmes.

If one looks at the police's strategy and policy one has to accept that the points mentioned are good and acceptable bases for quality service. Few, if any, would reject these premises as being invalid. We can also see what the policy aimed to achieve: The nature of the dispute was identified -- legitimacy of the police and the methods employed -- and it was decided to adopt a new policy and a co-operative style in an attempt to correct the problem.

The Interim Constitution

The above-mentioned views naturally formed the basis of the provisions of the Interim Constitution. Chapter fourteen regulates the South African Police Services. It enjoins the police to participate in community policing²⁵ and one of the tasks is to establish community-police forums.²⁶ In line with this approach, the new police institution is to be called the South African Police Service. The Interim Constitution does not guide us as to what community policing should entail. Perhaps wisely, the drafters deliberately left the matter open to see how the concept would evolve.

However, there is an important constitutional principle which should guide us here, namely, that from now on the constitution, and not parliament, is supreme. As a result the duty of the police is to protect human rights and the individual is to be protected against any form of state abuse. This, of course, is almost exactly the opposite to the position of not so long ago when the prime purpose of the police was to protect the state against individuals.

Comment

Although we appear to have all the ingredients for restoring relations between communities and the police, this initiative yielded mixed dividends. Some of the reasons are as follows:

- * Despite the new emphasis on consultation and co-operative behaviour, the policy itself was not the product of consultation within the police or within communities. The designers of the strategy did not practice what they intended to preach.
- * It was alleged that the community-police forums were being used by the police as a 'soft' intelligence-gathering mechanism, especially since most community liaison officers in the police were drawn from the ranks of former security police members.²⁷
- * The police at station level who had to implement the policy did not always share the new vision. On the one hand the policy called for the police to ignore past training

and to accept a policy in direct variance with their experience; on the other, members of POPCRU²⁸ saw the new policy as an attempt to undermine its approach, namely, that POPCRU members were the only true community police in the country.

- * The major problem, in my opinion, is that the policy does not address two fundamental issues: the hurt and ill-feeling caused by police action; and the behaviour of the parties and the reasons therefor. All the parties must be ready to accept and be capable of accepting the new approach. This ingredient was missing, both within the police and within the community.

Self-policing

Thus far I have outlined some views reflecting community policing as a policing strategy to be adopted by the state policing institution. However, it is also necessary to look at views which emphasise participation of community-based ordering institutions: in its extreme form, policing by the community, or self-policing.

In terms of this model, communities accept prime responsibility for their own safety and security and the police's role is that of a back-up agency to be called in when community discipline is ineffective and the lawful use of force is required. In any particular district, therefore, the policing function will be undertaken by local civic agencies, such as neighbourhood watches, anti-crime committees, self defence units or private security firms. Police act as a second line of defence against crime.

Those who favour this approach argue that it is not sufficient merely to change the attitudes of the old policing order, but that the entire system needs to be changed. First we have to redefine policing: policing should be community controlled, concerned with problem-solving, security and community integration²⁹ and 'should be understood as a product of a network of interrelated institutions operating at different levels and with different knowledge and resources'.³⁰ The emphasis should be on social ordering, providing a safe and secure environment, instead of offender-focused catching of criminals.³¹ Secondly, we should move away from a system which presupposes state responsibility for policing to one in which

poor people can function as powerful customers who can determine and control their own security needs (instead of being recipients of professional expertise over which they have no control).³²

Participants in a policing policy training programme organised by the Community Peace Foundation stated it thus:³³

'Policing policy and structures should, therefore, reflect the way we think about the transformation of society, the relation between state and civil society and the development of the country as a whole. Hence it is critical that a meaningful intervention be made by policy-makers, community and political organisations and other democratic formations, to transform policing in such a way that communities are empowered to engage in the process of transformation of policing, and not coopted and controlled through policing structures created by the state and imposed on them.'

Those who favour an African sense of justice and those who have an interest in maintaining self-ordering structures in the townships are naturally attracted to this point of view. African tradition has a developed ingrained notion of orderliness which emphasises values such as a sense of community awareness, respect and belonging.³⁴ Ncholo argues that the African sense of justice has been compromised or neglected when systems of policing were designed for African communities.³⁵ Social ordering is regarded as a function of the entire community and not that of a coercive external source.³⁶ Policing policy should therefore incorporate the practices and experiences of African people and reflect our country's diverse cultures.³⁷

The stand-off between black communities and the police under the previous government illustrates of how self-policing operates in its most extreme form: communities aimed to take all the responsibility for safety and security to the exclusion of the police. Anti-crime committees were alternative police, and people's courts alternative justice structures which meted out punishment.

Fortunately, there appears to be general agreement that this scenario is no longer tenable and proponents of the self-policing approach have accepted that community-justice structures also need to be transformed.

Self-policing is the core of the South African National Civics Organisation's (SANCO) policy and anti-crime committees (ACC's) play a prominent role within that structure. According to Sandi,³⁸

'... the civic movement has already begun a process of self-regulating and that well-organised popular justice structure forming part of civil society could be useful and legitimate in future.'

To become so, however, the civic movement has had to decide the basis upon which it wishes to engage with state police and justice structures. Current opinion appears to be that popular justice structures within civil society should consist of a network of anti-crime committees at various levels and a Community Court at each of these levels. The Community Court will consist of a civic committee, the anti-crime committee and the parties to the dispute.

TABLE 2: COMMUNITY JUSTICE STRUCTURES

<p style="text-align: center;">CIVIC COMMITTEE</p> <p>15 elected members</p>	<p style="text-align: center;">ANTI-CRIME COMMITTEE</p> <p>Anti-crime monitors Education officers Sanco representatives</p>	<p style="text-align: center;">COMMUNITY COURT</p> <p>Civic committee Anti-crime committee Parties to dispute</p>
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Members of civic committees are elected by residents in an area to seek solutions to a host of problems affecting that area. According to Sandi,³⁹

'An anti-crime committee is a campaign committee against crime, but operating under the auspices of the civic. Its weapon against crime is education and training of residents.'

And:

'An anti-crime committee can be defined as a non-state problem-solver which is not isolated from the community.'

The task of anti-crime committees is to investigate cases referred to them by the civic committees. After investigation the community court will hear the matter.⁴⁰ It is important, therefore, to know what types of cases are considered suitable for such form of intervention.

An early SANCO document on anti-crime committees⁴¹ defines crime as 'problems (like social and economic conflicts, environmental hazards, etc) that directly affect the community members'. It calls upon anti-crime committees to 'get involved in problem solving and crime prevention through:

- a. education
- b. cooperation with and by social workers; and
- c. research on socio-economic problems (like unemployment) and launching development projects.'

The emphasis in this document is on socio-economic problems and not issues of law and order. My impression is that it focuses on prevention of crime and not reactive policing.

In a later document, Sandi, who is a former National General Secretary of SANCO, lists the following cases as being suitable:⁴² car theft, rape, house-breaking, robbery, physical

assault, murder, insult, intimidation, incitement, harassment, ill-treatment, interference with privacy, vandalism. He adds, however, that 'rape and murder should be referred to the police after arresting the culprit. All disputes should be referred by a civic committee to an anti-crime committee for investigation, and hearing by a community court.'

It is clear that what is envisaged is a popular justice structure which is alternative to that managed by the state, but which is not aimed at punishment of the individual. The structures are seen as 'dealers in peace, order and conflict resolution', in other words, they are not intended to provide rights-based or power-based solutions, but to find solutions through education and training. These structures are considered to be schools where residents learn about human rights and they should not mete out any form of physical punishment.⁴³

It would appear, therefore, that the role envisaged for members of the anti-crime committee is not one of alternative police men and women. The committees are not intended to replace the police, nor are they aimed at taking over the police's duties.⁴⁴ Their prime function is not to ensure that offenders are brought to court so that society can exact retribution and impose punishment. They are also not in competition with the police, for they exist for an entirely different purpose, namely to provide the necessary infrastructure for peacefully resolving the conflict which manifested itself as criminal conduct.

Comment

- * As is the case with the police, therefore, we find within society a willingness to move away from the old competitive, all-or-nothing approach to a co-operative, problem-solving approach. Civic associations have identified one of the problematic issues and have taken steps to improve the situation.
- * We now have further insight as to why parties interact with each other in an adversarial manner. It is not just a question of legitimacy of the state policing institution: there is also the issue of control of township ordering. Civic organisations are quite prepared to work with 'outside agencies' that could assist in maintaining peace, but they wish to supervise the process.⁴⁵ The state institution is still seen as

an outside agency. The idea of police members being part of the community is not accepted. In workshops, members of civic organisations make it clear that police should report to them first before investigating a crime or conducting an operation in the area.

- * We also have a strong indication that a policing policy should incorporate some form of community autonomy. The traditional notion that communities have a role to play in social ordering should be recognised.
- * It is clear from the documents available to me that civic structures recognise that human rights of persons should be respected at all times. There is an urgent need to put that theory into practice.

RELATIONSHIP-BASED COMMUNITY POLICING

We see on all sides a willingness to transform and to adopt more positive attitudes. The question remains whether this is sufficient to deal with the existing and potential problems. I suggest not. We need to ensure that the changes we see are not merely cosmetic.

Characteristics

Some time ago the Reverend Mr Tom Cunningham pointed out to me that there were in fact two schools of thought within the co-operative, problem-solving camp. The most popular approach is that of the renowned authors, Fisher and Ury,⁴⁶ who propound a principled, interest-based approach to negotiation: hard on the problem, soft on the person. Separate the people from the problem, they say, and be unconditionally constructive in one's approach. Fisher and Ury have indeed offered the world an alternative to the traditional distributive bargaining, winner-take-all-at-all-costs approach. However, while this view aims to remove or at least reduce antagonism between parties, it remains adversarial as far as the issues are concerned. It therefore offers an alternative style of competitive behaviour which will hopefully bolster the quality of the end-product.

The Fisher and Ury approach is an effective negotiation approach and can be gainfully used in many instances, including the field of police-community relations. This is exactly what the police's community-policing policy aims to do. Its approach is that the state will remain responsible for policing functions, but police will in future adopt a community-sensitive, consumer-orientated approach. The new approach which Sandi suggests for community-justice structures mirrors the police's approach: civics should remain involved in social ordering, but work in conjunction with the police.

There is another school of thought which, in my view, offers a better theoretical basis for dealing with the issues at hand. The conflict partnership idea, propagated by Weeks,⁴⁷ corresponds substantially with the interest-based approach, save for one major aspect: the competitive aspect is removed entirely. Emphasis is placed on the relationship and a dispute is seen not as a conflict relating to rights, power, or interests, but as a breakdown in the relationship between parties. Underlying this approach is the view that one comes into conflict only with people who are important to one. If someone is unimportant to you or to the way in which you go about your business or your life, the chances are that you will not have disputes with that person. Conflict resolution, therefore, is about improving relationships between parties, about rebuilding 'relationships on a mutually beneficial foundation, and even to avoid future conflicts'.⁴⁸

In addition to the assumptions set out under co-operative behaviour, the relationship-based approach is based on the following assumptions:⁴⁹

- * Conflict must be seen in the context of the overall relationship. A good solution to a dispute is one that not only resolves the issue but also improves the relationship
- * Parties should not behave adversarially towards each other. Instead they should, as a team, behave adversarially towards the problem which brought them into conflict with each other
- * A good solution results in mutual benefits

- * Focus on individual and shared needs
- * Utilise power in a positive manner
- * Look to the future
- * Learn from past mistakes but also retain what was good
- * At the end of the process, when the conflict is resolved, parties should be in a better position to deal with future conflicts between them

A new order

I am convinced that society is no longer concerned about **who** should be ensuring a safe and secure environment, despite past attitudes towards the police and other ordering institutions. Neither the Police Service nor society objects to idea that citizens should take responsibility for their own security. We are in fact encouraged to fit burglar bars, car alarms and the like. There is also little objection to the existence of a police service which is charged with a policing function.

The important issue is **how** that function is provided. The Interim Constitution provides guidance in this regard, and my contention is that its provisions apply not only to state institutions, but also to civic organisations and individuals who engage in social ordering activities. One cannot, for example, shout about police abuse and condone the retribution effected by spontaneous assemblies.

It is also vital that partners in social ordering realise that they need each other in order to function effectively. Recognition of this fact will be a major breakthrough on the path of reconciliation. A popular justice system aimed at preventing crime through problem solving and education cannot function in a climate of anarchy and lawlessness. And no policing institution can function effectively without community support.

But the recognition must be supported by mutual respect. Almost all the communities in which I have worked stress that they wish to retain their own identity as partners: persons involved in community policing do not want to be co-opted police members. If that's what they want to be, they would become reservists. At the same time communities should respect that police are members of society who have been trained to perform a professional function. They, too, wish to retain their identity as partners in the process. Just as communities should not be dominated by police, so the Police Service should not be dominated by communities. Partners should respect one another as partners and not aim to control or manipulate the partnership relationship. We cannot achieve a safe environment when important players remain in competition for control of the ordering process, albeit in a more friendly atmosphere.

There is also another aspect to this point, which tends to be ignored. The partnership which we need to establish is not solely between 'the police' and 'the community'. There is still much work to be done to restore relationships among our various communities. The community-policing partnership must not be dominated by one or two powerful partners. Safety and security is an individual issue as much as it is a community issue. Perhaps more so, for the safety of the least powerful in our society is often the most threatened. I believe firmly that every person or organisation who wishes to participate in the partnership should have a right to do so. And anyone committed to community policing should ensure that the right is respected.

CAN COMMUNITY POLICING PROMOTE RECONCILIATION?

Reconciliation will not result without genuine effort to move away from past practices. It will not come about at a Damascus-type event, but through a pain-staking process. We need to rediscover who we are and what our needs and values are. Community policing offers such an opportunity, provided that the policy is formulated and implemented in the proper manner. The following considerations are relevant:

- * Consent remains an important principle. Without community support the policing institution has no legitimacy and cannot offer an effective service.

- * Police do not have the capacity to deal with safety-and-security issues on their own. Some form of self policing is essential.
- * Self policing is a norm found in all sub-communities in our country. In some instances it arises out of the state's incapacity to provide a safe environment, in others it is evidence of a need to participate in social-ordering processes.
- * The role of non-governmental ordering institutions such as tribal authorities, anti-crime committees, organisations which provide conflict resolution services, private security firms and company security divisions should be recognised. They should be provided with the capacity to function effectively.
- * Successful policing is based upon sound relations between police and communities. The relationships should be nurtured and protected. Policing should take place in partnership, not in parallel as happened in the past.⁵⁰
- * Policing policy should not be imposed upon either parties. The content of the policy and the process for designing and implementing the policy should be acceptable. All the parties should feel that their needs have been met in some way.
- * State police and self-policing institutions should be subject to the Bill of Rights, supplemented by a strict code of conduct.
- * No amount of theorising will suppress one core issue, however. Community policing must result in a reduction of crime.

However, no matter how good the policy, it might as well be discarded if it is implemented for the wrong reasons. We must know what our objectives are.

There are two ways in which one can view community policing: as a policy of the state policing institution, or as a vision of how society should be regulated. The former, in my opinion, is too narrow an approach and the latter view appears to accommodate it. If one

believes as a matter of principle that communities should be allowed to take responsibility for their own safety, then the state institution's policy should provide for such an objective.⁵¹ I believe that society as a whole, through its elected representatives should determine how it wishes to be regulated and that the executive arm of government should then implement that policy. We got it right, therefore, when we negotiated a policy and placed it in the Constitution.

But what is community policing meant to achieve? In my opinion, we should concentrate both on establishing a platform upon which normal policing can take place and the more technical objectives found elsewhere in the world. I therefore suggest that policing policy in our province should actively promote the following:

* Legitimacy

The most obvious goal should be to gain community support for the state policing institution. Community policing should therefore address problems of the past and attempt to create a legitimate state policing institution. The structure and management of the institution should be less secretive. Past policing practices should be shelved and be replaced with consumer-sensitive policies and procedures.

But it is not only the legitimacy of the police that is at stake. Community-based ordering structures also need to become legitimate, not in the eyes of their members, but from the point of view of government, the police and other community structures. On the one hand, the interests of such structures in policing issues should be recognised.⁵² On the other, the structures themselves need to develop policies and procedures which are sensitive towards non-members and the police. The policy should aim to ensure that this reconstruction also takes place.

* Changing patterns of behaviour

This objective is linked to the previous one. Community policing should aim to change the behaviour pattern of the state institution from an adversarial approach to

a co-operative one. Again, this is not a one-sided matter. The policy should also aim to change the way in which the community members interact with the police. This latter aspect has thus far received minimal attention and needs to be given more prominence in future.⁵³

* Capacity-building

Members of the police should be retrained so that they are able to engage with civilians in a non-authoritarian way. But civilians also need to be equipped with skills so that they can be effective partners. At present few people outside the Police Service are able to speak with some authority on policing issues. Special education programmes need to be implemented to prevent one or more partners from dominating others.

* Reconciliation and relationship-building

While the above objectives are important, they do not adequately deal with the hurt of the past. The proposed Truth and Reconciliation Commission might go some way in dealing with this issue, but I believe that a properly-focused community-policing policy will be more effective. A partnership approach will cause former adversaries to work together in solving problems.⁵⁴ As partners they will experience frustrations and enjoy successes. In time people will understand others' needs and hopes. Community policing offers an opportunity for establishing trust which is a necessary first step towards true reconciliation.

* Joint responsibility and inclusiveness

Although this objective is inherent in some of the other objectives, it requires special emphasis. Ownership of the policy cannot vest in the police, or in the community, or any sector of the community. At the same time, if any sector who wishes to participate is excluded from the process, adversarial relationships are likely to result. Joint responsibility, co-ownership and inclusiveness are crucial goals.

* Quality service

Community policing should aim to produce innovative strategies and efficient use of resources. If resources are directed at problems in an area policing should be more effective, especially if communities begin to work with the police instead of against them. Adherence to the standards set in the Bill of Rights will also improve professionalism. To improve the quality of service, certain organisational changes will be necessary, for example, more decentralization, less bureaucracy, less specialisation and a less hierarchical organisation.⁵⁵

* A safe environment

Safety and security is the focus of any policing policy. The emphasis should be on promoting stability and tolerance. Community policing should promote strategies which reduce crime and lessen public fear. To ordinary citizens, this is the most important issue. So the policy should in fact declare war: on crime.

CONCLUSION

It is vital that we implement community policing for the right reasons and I have attempted to show that research in the field of conflict management can be of value to us. We should not forget that even a policing policy has the potential to create disorder. If incorrectly implemented community ordering institutions may continue to be sites of struggle against the state. I indicated earlier that negotiation patterns depended largely upon one's choice to value one's self-interest or own's relationships more highly than the other. Our society tends to emphasise goals and we are schooled in confrontational methods of conflict resolution. If we wish to promote reconciliation we will have to make a conscious effort to reassess our values and to recognise that improved relationships is a necessary outcome of conflict resolution. We need to recognise further that reconciliation does not result from a single event: it is the consequence of social transitional process. Former adversaries -- in the community and in the police -- must begin to understand each other's values, rights and duties. What better way to achieve this aim than through a process of partnership?

NOTES

1. Police Training Workshop, Boknes, 3 June 1993; Four Community Policing Workshops: 17-19 June 1993; Community Visitors Workshop, Grahamstown, 13 September 1993; Training Workshop for Community Visitors, Grahamstown, 12 January 1994; Community-Policing Workshops for the following communities: Motherwell (13 March 1994), Cradock and surrounding towns (9 and 10 June 1994), Paterson (13 July and 30 November 1994), Grahamstown (4 August 1994), New Brighton, Motherwell and Kwazekhele (24 August 1994), Alicedale (25 August 1994), Port Alfred (24 September 1994), Burgersdorp and surrounding towns (5 October 1994), Middelburg and surrounding towns (6 October 1994), Beacon Bay (25 and 26 October 1994), the greater East London area (26 October and 27 November 1994), Barkley East (7 November 1994), Fort Beaufort (16 November 1994), New Brighton (16 December 1994), Alexandria (16 March 1995), Umtata, involving a number of Transkei towns (22 March 1995), Cradock and surrounding towns (25 March 1995); Meeting between SAPS management and unions resulting in a co-ordinated working relationship between them on community policing policy, Seaview, 22 September 1994; East-West Community-Policing Workshop: 21-23 October 1994 (The purpose of this workshop was to share ideas between people from the Eastern Cape Province and the Western Province so as to improve community participation in policing activities).
2. Participants in the community-policing workshops were drawn from both police and community constituencies. The standard procedure was to divide participants into small groups who would then report on their deliberations. This information was then recorded. In some instances the constituencies first met separately in order to prepare themselves for the exercise and also to prevent police perspectives to dominate discussions entirely.
3. Surveys of Grahamstown residents and police were conducted during July 1994 and one in August 1994. Another survey, of residents in Alexandria, Alicedale, Grahamstown, Kenton-on-Sea, Paterson, Riebeeck-East was conducted during December 1994.
4. Constitution of the Republic of South Africa, Act No 200 of 1993.
5. W L Ury, J M Brett and S B Goldberg **Getting Disputes Resolved** (1988) pp 4-5.
6. Ury, Brett and Goldberg *supra* note 5 p 7.
7. See, for example, John S Murray 'Understanding Competing Theories of Negotiation' in **The Negotiation Sourcebook** Ira G Asherman and Sandra Vance Asherman (eds) (1990) p 23.
8. Ury, Brett and Goldberg *supra* note 5 p 7.
9. Murray *supra* note 7 p 25.

10. Mike Brogden and Clifford Shearing **Policing for a New South Africa** (1993).
11. Brogden and Shearing supra note 10 p 142.
12. Murray supra note 7 pp 6 and 7.
13. Preamble of the National Peace Accord.
14. Etienne Marais 'Community Policing in South Africa: Prospects and Challenges'. Report of the Community Policing Working Group, Policing Research Project, paper presented to the second Centre for Criminal Justice Conference on Policing in the New South Africa, Durban. 18-21 September 1992.
15. Gavin Cawthra **Policing South Africa** (1993) p 167.
16. The Cape Argus 30 April 1992.
17. The Cape Argus 14 November 1992.
18. The Cape Times 25 January 1993.
19. Ibid.
20. The Cape Argus 14 May 1993.
21. The Cape Argus 20 March 1993.
22. A Pruis 'Community Policing in South Africa -- A Shift in Emphasis: New Approach or Simply "Back to Basics" ' unpublished paper (1993).
23. Cawthra supra note 15 p 165.
24. In a survey amongst police staff at the Market Square Police Station in Grahamstown seventy-five per cent of the respondents thought that community policing was a good policy. This finding was especially interesting in light of the fact that a substantial portion of respondents, 34%, were not convinced that the policy maintained professional standards. Police at station level, and this view is prevalent throughout the province, understand community policing as community-assisted policing. Police are willing to work with community members, but are most concerned about interference with their professional function. They wish to retain control of the policing function, making use of community resources in order to improve the quality of the police's service.
25. Section 219.
26. Section 221.
27. The Cape Argus 23 April 1994.
28. Police and Prisons Civil Rights Union.

29. Brogden and Shearing supra note 10 p 166.
30. Brogden and Shearing supra note 10 p 175.
31. Daniel Nina 'Community Policing? The Role of the Anti-Crime Committees in a new South Africa' unpublished paper presented at a conference entitled 'Towards Democratic Policing', 10-12 April 1994. Nina states: 'By policing it is understood all the different institutions which in one way or another come together to protect citizens and to enforce a particular type of "legality". This "legality" might coincide with the state definitions, but it also could differ. This definition of policing will include, for example, the private security firms and organic [community] mechanisms of policing. A point of convergence of these different types of policing is that they try to maintain a particular order.'
32. Clifford Shearing 'Reinventing Policing: Policing as Governance' **Imbizo** April 1994; Nina supra note 31.
33. Untitled document distributed at the Community Peace Foundation's Policing Conference, Bellville, April 1994.
34. Zwayi Mnqojana 'Community Policing' unpublished paper delivered at a workshop on community policing, Umtata, 22 March 1995.
35. Paseka Ncholo 'Alternate Ordering Mechanisms and Alternate Justice -- Myth and Reality' 1994 **Imbizo** 5.
36. Mnqojana supra note 34; Ncholo supra note 35.
37. Ncholo supra note 35.
38. Ntsokolo Dan Sandi 'Guidelines for civic committees, anticrime committees and community courts' (1993) p 1.
39. Supra note 38 pp 1 and 4.
40. Sandi supra note 38 p 2.
41. 'Proposal for a uniform model of Anti Crime Committees and Community Courts For the Eastern Cape', July 1993, Port Elizabeth.
42. Sandi supra note 38 p 2. See also SANCO Gugelethu 'Guidelines on Community Policing' and SANCO Grahamstown 'Proposed paper in Policing' (26 September 1994).
43. See also the documents produced by SANCO Gugelethu and SANCO Grahamstown (supra note 42).
44. Sandi supra note 38 p 4.
45. SANCO Gugelethu and SANCO Grahamstown documents supra note 42.

46. Roger Fisher and William Ury **Getting to Yes** (1987).
47. Dudley Weeks **The Eight Essential Steps to Conflict Resolution** (1992).
48. Weeks supra note 47 p 65.
49. Weeks supra note 47 pp 64-71.
50. Sandi's guidelines to civic structures offers an opportunity to develop a relationship-based community-policing policy which could provide the basis for true reconciliation between police and township communities. If pursued to its logical conclusion, the social ordering envisaged in that document is not in competition with the state policing function, but complementary to it. (In fact the document could be regarded as a first step towards establishing a community-based NGO focusing on popular justice and appropriate dispute resolution methods. The potential competition is, not with the police, but with NGO's with similar vision and expertise, for example, IDASA and IMSSA.) The current police view is that a problem-solving preventative approach to crime should be followed, using all resources available to achieve this purpose. Civic structures have a similar problem-solving view, and provide the structural capacity and legitimacy to put the policy into practice.
51. In a survey among residents of Grahamstown, 51% of the respondents indicated that they did not understand what was meant by 'community policing'. However, when requested to furnish their views on what community policing should entail, respondents stressed safety needs, protection of the entire Grahamstown community and prompt service. Other aspects mentioned were accountability ('providing information to people'), credibility and respect from the police and the community, forum control of police activities, harmonious and proper working relations between the police and the community ('people should be part of community policing'), service to the community, the observance of human rights, approachability, more frequent patrols, sensitive and fair treatment of all the city's people, community participation in policing issues, the need to address people's complaints ('police should know the problems of the community they serve'), proportional distribution of police resources, crime control and constructive community participation in reducing crime. This indicates that civilians prefer a partnership approach to community policing, although they accept that it should also be state policing policy.
52. Saras Jagwanth 'Defining community policing in South Africa' (1994) 7 **SACJ** p 164 at p 175.
53. This point illustrates why community-policing cannot be limited to being a policy of the Police Service.
54. These comments are not restricted to building relationships between members of the police and the black communities. Much work is required to establish and restore relationships within society itself.
55. British Columbia Commission of Inquiry Final Report on Community-Based Policing Volume 1 p C-7.