POLICING AND ACCOUNTABILITY IN THE DIGITAL AGE
September 15, 2016
Greenberg Lounge, New York University School of Law
40 Washington Square South, NY, NY 10012

8:30 A.M.   **REGISTRATION & BREAKFAST**

9:00 A.M.   **INTRODUCTION**

Michael Waldman, President, Brennan Center for Justice

9:10 A.M.   **KEYNOTE ADDRESS** - **Technology and the Changing Face Of Policing**

William Bratton, Police Commissioner, New York City Police Department & Member; Law Enforcement Leaders to Reduce Crime & Incarceration

9:45 A.M.   **MIND THE CONSTITUTIONAL GAP: SURVEILLANCE, SPEECH, RACE, AND RELIGION**

Although some federal and state statutes regulate the use of technology by law enforcement, much of the regulation has been left to the courts. Yet as anyone familiar with the judicial decisions would be quick to point out, not only do those court decisions leave significant gaps in how technology is regulated — primarily because much technology may not qualify as a "search" under Supreme Court precedent, but also because the courts have failed to offer sufficient protection to particular groups that are or may be subjected to law enforcement technologies.

This panel will discuss how various parts of the Constitution, including the First Amendment, the Fourth Amendment, the Equal Protection Clause, and the Due Process Clause, can be understood to ensure that law enforcement technology is used within proper bounds, and in particular does not inappropriately chill the rights of individuals, including lawful protestors, or fall more heavily on populations such as immigrants, minorities, or the poor.

Mariko Hirose, Senior Staff Attorney, New York Civil Liberties Union
Rachel Levinson-Waldman, Senior Counsel, Liberty & National Security Program, Brennan Center for Justice
Ben Rosenberg, General Counsel, Manhattan District Attorney's Office
Katherine Strandburg, Professor, NYU Law School

Moderated by **Maria Ponomarenko**, *Deputy Director, Policing Project*

11:00 A.M.   **BREAK**

11:30 A.M.   **TWEETS, LIKES, AND LAW ENFORCEMENT**

The widespread use of social media has provided new avenues of communication and expression for all of us, including those seeking to organize politically. At the same time, social media — like other methods of communication — can be used to broaden the reach of people who are inclined to do harm to society. As a result, law enforcement naturally views social media as a rich source of information for tracking wrongdoers and unraveling potentially criminal networks. The government also applies pressure on private companies to shut down social media accounts and delete content that it believes promotes terrorism, and there has been increasing reliance on use of social media in material support and other criminal indictments.

This panel will discuss the appropriate bounds to government interference with social media as well as what limits may be imposed on law enforcement's use of social media to follow violators and the public. The panel will also grapple with the competing descriptions of social media as (on the one hand) a tool of free expression and (on the other) a tool of material support for unlawful activity.

> **Jumana Musa**, Senior Privacy and National Security Counsel, National Association of Criminal Defense Lawyers
> **Amie Stepanovich**, U.S. Policy Manager, Access Now
> **Scott Thomson**, Chief of Police, Camden County Police Department (N.J.)

*Moderated by **Liza Goitein**, Co-Director, Liberty & National Security Program, Brennan Center for Justice*

1:00 P.M.   **LUNCH – HUMAN DECISIONS AND MACHINE PREDICTIONS**

*Remarks by **Jens Ludwig**, Director, University of Chicago Crime Lab*

The criminal justice system is currently full of decisions that hinge on a prediction: Where is crime most likely to occur next? Who is most likely to recidivate? Which police officers are at elevated risk for getting themselves, or someone else, into trouble, and hence should be prioritized for non-disciplinary supports? Right now the predictions that inform the decisions that human beings make are themselves also made by humans. But a large literature from behavioral science makes clear that these predictions ask people to do what we know is difficult for them to do: think probabilistically, draw statistical inferences and attribute variation in probabilities to different factors. Alternatively, we could inform these human decisions with data-driven predictions that come from a statistical model. Tools from the field of machine learning may be well-suited for making such predictions. At the same time, critics have raised concerns, including that such tools incorporate and perpetuate existing patterns of racial and socioeconomic discrimination, that there is inadequate transparency into how these tools work, and that the data in some areas is simply insufficient to produce accurate results. We will discuss both the promise and potential pitfalls of applying these tools to policing and related criminal justice applications.

2:15 P.M.   **UNEASY PARTNERSHIPS: PRIVATE INDUSTRY AND THE**
                   PUBLIC TRUST

The use of technology in policing increasingly requires cooperation between law enforcement and private industry. This is evident in debates about encryption, the use of Stingray technology, the deployment of predictive policing software, and the arrangements between telecoms and law enforcement to obtain location tracking information. This cooperation raises difficult questions concerning private industry's influence in policing — for instance, whether the profit motive is skewing choices that law enforcement or the public otherwise would make. It also has posed challenges to ensuring that law enforcement policy is transparent to the citizenry — for instance, when private companies raise claims that their technology must be kept secret on intellectual property grounds.

This panel will address how to navigate the challenges of public-private partnerships to ensure that what occurs meets the demands of democratic governance and constitutional law.

> **Julia Angwin**, Senior Reporter, Pro Publica
> **Jim Bueermann**, Executive Director, Police Foundation
> **Jeremy Heffner**, Product Manager, Hunchlab
> **Aliya Rahman**, Director, Movement Technology, Wellstone

Moderated by **Michael Price**, *Counsel, Brennan Center*

3:45 P.M.   **FIRESTARTER DISCUSSION**

Conversation with **Anika Navaroli**, Senior Campaign Manager for Media & Economic Justice, Color of Change, and **Linda Sarsour**, Executive Director, Arab American Association of New York, on impact of surveillance on minority neighborhoods.

Moderated by **Faiza Patel**, *Co-Director, Liberty & National Security Program, Brennan Center for Justice*

4:15 P.M.   **BREAK**

4:30 P.M.   **WHERE DO WE GO FROM HERE?**

Given the issues articulated in the discussions during this symposium, what would a path forward look like? How do we preserve law enforcement access to cutting-edge technology while also ensuring democratic accountability and oversight? What models have been tried so far, and which ones have the most promise for the future?

Hassan Aden, Senior Executive Fellow, Police Foundation
Philip K. Eure, Inspector General, New York Police Department
Faiza Patel, Co-Director, Liberty & National Security Program, Brennan Center for Justice
Magistrate Judge Stephen Smith, U.S. District Court for the Southern District of Texas

Moderated by **Barry Friedman**, *Director, Policing Project; Professor, New York University School of Law*

5:45 P.M.   **CLOSING COMMENTS**

Barry Friedman, Director, Policing Project; Professor, New York University School of Law

6:00 P.M.   **END OF CONFERENCE**