

DomPrep Journal

New Age of Police Reform

Volume 16, Supplement, December 2020



- Introduction
- Perfect Storm Podcast
- Inclusive Police Workforce
- Police Accountability & Oversight
- National Police Reform
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DomPrep Journal is electronically delivered by the IMR Group Inc., P.O. Box 810, Severna Park, MD 21146, USA; phone: 410-518-6900; email: subscriber@domprep.com; also available at www.DomPrep.com

Articles are written by professional practitioners in homeland security, domestic preparedness, and related fields. Manuscripts are original work, previously unpublished, and not simultaneously submitted to another publisher. Text is the opinion of the author; publisher holds no liability for their use or interpretation.



The New Age of Police Reform Special Issue Reprint of Joseph W. Trindal's articles

Editor Note: Building Back Stronger
By Catherine L. Feinman5

Introduction to the New Age of Police Reform
By Joseph W. Trindal6

Podcast: Law Enforcement's Perfect Storm 2020
By Joseph W. Trindal10

Building Community Trust Through
an Inclusive Police Workforce
By Joseph W. Trindal & Lynn Holland11

Police Accountability & Oversight:
Redundancies & Opportunities
By Joseph W. Trindal18

National Police Reform:
Intergovernmental Friction & Cohesion
By Joseph W. Trindal27

Podcast: Law Enforcement's Tsunami of Change 2021
By Joseph W. Trindal32

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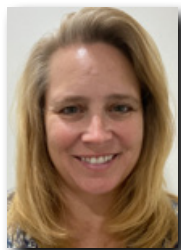
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Building Back Stronger

By Catherine L. Feinman



After a hurricane impacts a community, a common practice is not just to rebuild the homes and businesses, but to build them back stronger to withstand greater winds and higher flood waters. This same concept is emerging in law enforcement. Growing social and political pressures have threatened the traditional law enforcement establishment. However, these pressures have led to agencies finding new ways to build back stronger and fortify their relationships within and between communities.

Today's law enforcement is faced with challenges in four key areas: public consent, rule of law, restrained use of force, and independence from political influence. Adding to these challenges is the global exposure of local events through social media and news outlets. For example, a tragic death in one city can spark protests and demonstrations in other cities around the world. This widespread outcry has spurred calls for police reform across numerous jurisdictions.

Years of staffing and retention challenges were a sign of a growing problem, but sometimes it takes a crisis for true change to begin. In 2020, the conflagration of law enforcement challenges and incidents, social and political unrest, and even a pandemic pushed talks of police reform to the forefront. Amid the crises, opportunities and strategies to reconnect law enforcement with the communities they serve have emerged – with accountability and transparency leading the discussion.

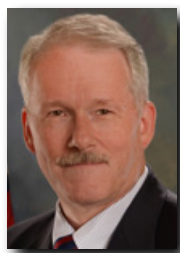
Combining public pressure with a new presidential administration, police reform efforts are likely to continue building momentum in the upcoming year at the local, state, and national levels. This publication of “The New Age of Police Reform” provides an overview of how law enforcement agencies are addressing modern challenges and domestic preparedness concerns, determining training needs, and rebuilding trust.

Although changing the internal culture and external perception of a long-standing institution is a difficult task, significant change is on the horizon. This special edition of the *DomPrep Journal* highlights a series of articles and podcasts that describe what law enforcement agencies are doing or plan to do to help rebuild community trust, ensure accountability and oversight, and promote intergovernmental cohesion.

The New Age of Police Reform – Part 1

By Joseph W. Trindal

As if the first two decades of the 21st century were not dynamic enough, the first year of the third decade has impacted every person on multiple levels. While the viral pandemic continues to affect every profession, health care professionals around the world are dramatically reassessing their service delivery models. The pandemic indiscriminately sweeps across geopolitical borders, similarly the strong call for social justice reforms is traversing the globe demanding action and change. For example, within hours of the tragic death of George Floyd in Minneapolis, Minnesota, demonstrations insisting on social justice reform emerged in cities worldwide. The energy behind these demonstrations and even violent protests continue to fuel police reform measures beyond the U.S. In a series of four articles, the DomPrep Journal will examine the foremost initiatives of modern police reform in America.



Much of the world looks to the U.S. as an innovative leader in democratic policing. Therefore, the modern U.S. police reform movement will shape global democratic policing for decades to come. Calls for reform range from sound initiatives – building upon collaboration and inclusion – to extreme calls for eliminating public police services all together. This article, together with other articles in this series, will cover a select number of the most prominent or most promising police reform initiatives.

It is important to recognize that police reform is a continuing journey of improving and right-sizing the police-citizen coexistence. There are lessons to be drawn from the origins of modern democratic policing that hold relevance to 21st century reforms.

The Original Democratic Police Reform Movement

The foundation of values in policing democratic societies trace its origins to a [reform movement](#) in London in the 1820s. At that time, Home Secretary Sir Robert Peel led a landmark transition from privatization to public policing in order to establish professional standards and effectiveness, which had to be balanced against public consent of policing. Peel is credited as the father of modern policing with the passage of the [Metropolitan Police Act of 1829](#). The importance of professionalizing police service was reflected in an enormous record of instructions, orders, and memoranda issued to govern police service.

In just over 30 years, [instructions to police](#) occupied 22 volumes that are historically preserved by the London Metropolitan police. The lessons drawn from creation of the London Metropolitan Police (Met) emphasize community and police cohesion. Early police service performance metrics at the Met emphasized crime prevention over arrests and enforcement action. The [Nine Peelian Principles of Police Service](#), drawn from those early instructions, still remain relevant in the 21st century, as Americans continue the journey of improving their police service approach. Essentially, there are four pillars of the modern British policing model, which share relevance with U.S. police reform today: (1) consent of the public, (2)

accountability to the rule of law, (3) restrained use of force, and (4) independence from political influence. Considering these core pillars, police services in the U.S. – as in other democracies – are presented with [inherent friction](#) between “consent and balance” and “independence and accountability.”

Reorganization & Fiscal Reprioritization

In January 2020, the Chicago Police Department (CPD) announced sweeping [reorganizational initiatives](#) under Interim Police Chief Charlie Beck (former Los Angeles Chief of Police). CPD’s steps include reallocation of personnel such that sworn officers previously working in administrative and support positions are returned to [field assignments](#) to perform patrol duties. This provides greater police connection with communities in preventing and deterring crime. Homicide Division detective assignments have also been decentralized with the added overall emphasis on precinct-based command accountability. Beck’s expectations are that [decentralizing homicide detectives](#) to assigned areas will increase investigative effectiveness resulting in higher and faster case clearance rates through closer community connections.

Four pillars of U.S. police reform – past and present – include public consent, rule of law, restrained use of force, and independence from political influence.

One of CPD’s most progressive restructuring initiatives is the creation of the Office of Constitutional Policing and Reform, placed under the command of Deputy Superintendent Barbara West. In advancing CPD’s implementation of the [2019 Chicago Police Consent Decree](#), the Office of Constitutional Policing and Reform is organizationally on par with the Office of Operations as the two main sections in CPD. The Los Angeles Police Department (CA) also has an [Office of Constitutional Policing and Policy](#) as one of a number of organizational reforms under the [2001 Los Angeles Police Consent Decree](#) and other initiatives. Other agencies have taken similar measures, for example, Long Beach Police Department (CA) announced in August 2020 the creation of the [Office of Constitutional Policing](#) to “rethink traditional policing in a manner that will help implement equity, justice, and constitutional public safety.”

Additionally, [CPD’s Use of Force Policy](#), updated 29 February 2020, states that “the Department’s highest priority is the sanctity of human life.” In keeping with the Peelian principles, the revised policy adds that “a strong partnership with the public is essential for effective law enforcement.” CPD’s revised policy also requires CPD officers to “ensure compliance by themselves and other members” of CPD, adding further instructions to “act to intervene” and “immediately” report observed excessive force of fellow officers.

Coinciding with New York’s Office of Attorney General’s July 2020 release of the [Preliminary Report on the New York City Police Department’s Response to Demonstrations Following the Death of George Floyd](#), New York [Attorney General Letitia James](#) called for moving oversight

of the New York Police Department (NYPD), the largest U.S. municipal police department, from the purview of the mayor to an independent commission. In June 2020, the New York City Council voted to reallocate \$1 billion from NYPD's nearly \$6 billion budget. To put this example in context, while enacted amid calls for defunding NYPD, [NYC reported](#) a \$9 billion loss in revenue due to COVID, and the council's passage of an \$88.1 billion 2021 budget was a 7.6% reduction from Mayor DeBlasio's original \$95.3 billion budget request. As a result, NYPD canceled its July academy class and is under a hiring freeze, as are many other city departments, except those performing health and safety responsibilities. Some like former Deputy Major Richard Buery Jr. [criticized the NYPD cuts](#), tweeting that "these aren't really cuts to NYPD and don't reflect a fundamental shift in the nature of policing in NYC."

According to *Forbes* in August 2020, over a dozen other police departments have received budget cuts to their police services. Seattle's City Council voted in September to override the mayor's veto of immediate police department budget cuts. Council's budget authorization



for Seattle Police Department (SPD) projects workforce reduction through layoffs and attrition of nearly 100 by the end of 2020. Subsequent to the council's vote, then Chief Carmen Best announced her retirement. Best pointed out that the council's salary cuts and layoffs would inflict the most harm on younger, more diverse officers due to the seniority rules. Seattle's cuts to SPD also impact school resource officer programs and other specialized units, like harbor patrol and mounted (equestrian) patrols. As part of Seattle's Navigation Teams,

an interdepartmental program operated in cooperation with Seattle's Human Services Department, specially trained police help the [homeless population relocate](#) from the streets to shelters and into a variety of social services.

Many studies have shown higher incidence of mental illness among homeless populations. [Homeless adults with mental illness](#) are more likely to engage in criminal behavior and become crime victims than adults with mental illness in shelters. Seattle's plan for [eliminating the Navigation Teams program](#), of which police participation has been critically viewed by some as street sweeping and retraumatizing homeless, also affects Seattle's Human Services participation, thereby providing no alternative redirection assistance to this vulnerable population. U.S. Attorney General William Barr issued a statement regarding Chief Best's abrupt resignation commending her on her dedication while acknowledging her frustration. The [attorney general's press release](#) also admonished state and local governments, "This experience should be a lesson to state and local leaders about the real costs of irresponsible proposals to defund the police."

Los Angeles Police Department (LAPD) is facing funding reductions that will diminish the nation's second largest police department to 2007 staffing levels. Reducing police officers on patrol assignments increases response time and adversely impacts crime prevention through patrol presence. These reductions disproportionately affect socioeconomically disadvantaged communities. Resource constraints, like those imposed on LAPD and other police departments, require organizational realignment to operate within available resources. During periods of budgetary austerity, police services can no longer be the solution to all problems. Public safety communications specialists (dispatchers) have limited resources available to direct an ever-growing number of calls for services.

In 2019, [LAPD responded](#) to 20,757 mental health crisis related calls for service, most of which did not require enforcement action. To address the rise in mental health crisis calls, LAPD had created the Mental Evaluation Unit (MEU) comprised of officers specially trained as System-wide Mental Assessment Response Teams (SMART) paired with a clinician from the LA Department of Mental Health. Reduced LAPD workforce and availability to send officers to specialized training, like the SMART program, will impact Los Angeles City's ability to effectively address the nearly 21,000 mental health crisis calls help, which according to LAPD resulted in 456 weapons confiscations in 2019.

In a September 2020 [interview with Attorney General Barr](#), Chief Steven R. Casstevens, who is president of the International Association of Chiefs of Police, asked about the fiscal and resource austerity approach some communities are taking toward achieving police reform. The attorney general pointed out that defunding "is counterproductive and will lead to more victims." The attorney general added that law enforcement agencies need to improve community-based and national messaging about law enforcement. In response to Casstevens' question about the future of policing, the attorney general pointed out the realities of fiscal constraints facing all government levels of law enforcement. He added that recruiting and retention will be challenging. Community trust and respect are important aspects of attracting the best people to the police profession.

Barr pointed out that the federal agencies' support to state and local law enforcement in combatting violent crime is as important today as it was when he was attorney general in the early 1990s. He cited examples in which the U.S. Department of Justice's (DOJ) [Operation Legend](#), launched in July, has significantly reduced violent crime by applying federal interagency law enforcement personnel to work with state and local police in highly successful task force models.

Other Aspects of Current Police Reform

Leading up to and catapulted by the George Floyd tragedy in Minnesota, the current drive for improving police service and reinspiring community trust is far more complex than just budgets or organizational structures. There was great debate 200 years ago in London about the risks of publicly funded police to citizen freedom. A year after the Metropolitan Police Act of 1829 with the creation of the London Metropolitan Police, there was a cry to

abolish the police over militarization of policing and the lack of transparency eroding public trust in procedural justice, “let us institute a police system in the [hands of the people](#).”

This article is Part 1 of a four-part series on New Age of Police Reform. The next part will review the call for reforms in police hiring and promotion diversity and inclusion:

- Podcast – [Law Enforcement’s Perfect Storm 2020](#)
- Part 1 – [Introduction to the New Age of Police Reform](#)
- Part 2 – [Building Community Trust Through an Inclusive Police Workforce](#)
- Part 3 – [Police Accountability & Oversight: Redundancies & Opportunities](#)
- Part 4 – [National Police Reform: Intergovernmental Friction & Cohesion](#)
- Podcast – [Law Enforcement’s Tsunami of Change 2021](#)

Joseph W. Trindal, PPS, is founder and president of Direct Action Resilience LLC, where he leads a team of retired federal, state, and local criminal justice officials providing consulting and training services to public and private sector organizations enhancing leadership, risk management, preparedness, and police services. He serves as a senior advisor to DOJ, [ICITAP](#) developing and leading delivery of programs that build post-conflict nations’ capabilities for democratic policing and applied modern investigative techniques. After a 20-year career with the U.S. Marshals Service, where he served as chief deputy U.S. marshal and ERT incident commander, he accepted the invitation in 2002 to become part of the leadership standing up the U.S. Department of Homeland Security as director at [FPS](#) for the National Capital Region. He serves on the Partnership Advisory Council at the [IADLEST](#). He also serves on the [IACP](#), International Managers of Police Academy and College Training. He was on faculty as an instructor at George Washington University and has published numerous articles, academic papers, and technical counterterrorism training programs. He has two sons on active duty in the U.S. Navy. A Marine Corps veteran, he holds degrees in police science and criminal justice. He has contributed to the Domestic Preparedness Journal since 2006 and is a member of the Preparedness Leadership Council.

Law Enforcement’s Perfect Storm 2020

Law enforcement is having a perfect storm with challenges in hiring, challenges in retention, and challenges with early retirement. This podcast is a follow up to a discussion that began in January 2017 with Joseph Trindal. Joe leads a team of retired federal, state, and local criminal justice officials providing consulting and training services to public and private sector organizations enhancing leadership, risk management, preparedness, and police services.

This podcast is the prelude to a four-part article series on “The New Age of Police Reform.” Learn how law enforcement is seeking to find new ways to overcome modern challenges in an ever-evolving socioeconomic environment.

Click [here](#) for the podcast.

Joseph Trindal, Founder and president of Direct Action Resilience LLC

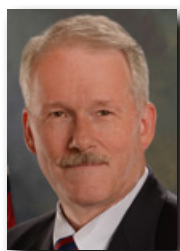


The New Age of Police Reform – Part 2

Building Community Trust Through an Inclusive Police Workforce

By Joseph W. Trindal & Lynn Holland

During the years leading up to 2020, the policing profession has faced many challenges attracting talent and retaining experience, particularly among sworn officers. A robust national economy, as evidenced by exceptionally low unemployment, had been one contributing factor to diminished applicant interest in the police profession. In 2017 and 2019, both the International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF) characterized police recruiting and staffing as in “crisis.”



The current situation with COVID-19 further complicates existing challenges for police recruiting. With today’s police reform initiatives and social justice demands, recruiting and retention face an unprecedented “perfect storm” of staffing challenges together with historic opportunities for diversification and inclusion.

U.S. [public confidence](#) in police is at a near 30 year low, according to an August 2020 Gallup poll. Public opinion varies by locale, ethnicity, and gender. Two of the most prominent of the [Peelian Principles](#) of policing states that “the police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain public respect” and “the degree of cooperation of the public that can be secured diminishes, proportionately, to the necessity for the use of physical force.” Today, the term “legitimacy” is often used to describe community confidence in their police. Legitimacy is also linked to public trust in the police services a community receives. The 2015 [President’s Task Force on 21st Century Policing](#) prominently positioned “building trust and legitimacy” as the first focused topic area or “pillar” for recommended action. The President’s Task Force, together with several studies and reports in the U.S. and other democratic societies, point to police workforce diversity as an important element in building community trust and legitimacy.

In the U.S., women began entering criminal justice professions in the 19th century out of the growing recognition of society’s special needs to best serve women and juveniles. Women were hired, first as matrons then, in the 1890s, Chicago appointed Marie Owens as one of America’s first women sworn police officers to meet the needs for investigating and enforcing new child labor laws, truancy, and addressing increased presence of domestic violence as a result of industrial age urbanization. Police departments in San Francisco (CA), Portland (OR), and elsewhere followed in response to the effectiveness demonstrated by the progressive [gender diversity in police service](#). Over 130 years later police workforce diversity remains an elusive, essential element of police reform. Today, American society has a much richer understanding of diverse communities coupled with an expectation that police service must justly serve their communities.

Barriers to Police Diversity Impede Community Trust

Addressing barriers to careers in the police profession enables police departments to develop and retain workforces reflective of the communities they serve. There are many barriers – internal and external – to careers in police professions. Similarly, there are internal and external stresses on retaining police officer diversity in the workforce. Police and community leaders must better recognize, address, and overcome, to the fullest extent possible, internal and external challenges to inclusive recruiting, hiring, and retention, without compromising high job-related standards and qualifications. Overcoming the recruiting, hiring, and retention challenges is ever more important as retirement-eligible officers of all ranks are leaving the profession. Also, agencies should expect [greater job migration](#) across the police profession and jurisdictions.

Attracting diverse young people requires different outreach approaches that connect with a diverse pool of prospective applicants with the wide range of police specialization. Police careers in the 21st century offer many technical tracks that, if effectively publicized, can

Challenges in police staffing present opportunities for reform strategies that bring police services more closely connected with their communities of service.

resonate with every aspect of the diverse communities served. Successfully diverse police departments and agencies use an array of marketing materials depicting various aspects of policing, designed for target audiences as well as reaching out through various social media sources and in-person recruiting sessions with targeted groups. Effective recruiting today requires well developed strategic planning, inclusive leadership, and nontraditional execution.

However, one of the greatest barriers police leaders and recruiters must overcome is the growingly negative public perception of policing. Inclusion and leadership are powerful countermeasures to negative perception through building legitimacy and trust.

Guardian Versus Warrior Policing

The public and many people within the police profession view law enforcement through an enforcement or warrior lens. For decades, police have been characterized as *the* front line on the “[war on crime](#)” and “[war on drugs](#),” as well as the domestic front of the “[global war on terrorism](#).” The entertainment industry has helped feed this warrior narrative with substantial help from “[Dirty Harry](#)” movies. The term “first responder” even downplays crime prevention and community partnership. The dichotomy between warrior versus guardian models of policing is still debated, principally in context of use of force issues. However, these distinctions are also relevant to attracting and retaining workforce diversity. Although both models have a place if prudently applied in relevant police situations. The predominance of one over the other, as a reflection of departmental culture and doctrine, impacts officer performance, workplace conditions, and the types of people serving within the department. This then directly impacts community trust and police legitimacy.

Assistant professor Kyle McLean of Florida State University describes the [warrior mindset](#) as traditional police methods of searching for, chasing down, and apprehending criminals. The guardian police mindset, however, ascribes to the public service community engagement, crime prevention, and public assistance as priorities. Recruiting materials that reflect high-risk enforcement action is one example of attracting warrior-model officers, which inherently emphasizes male-dominated aspects of policing. It also implicitly creates barriers across wide-ranging, underrepresented groups who may otherwise consider careers in a public safety policing profession. The reality of police service is that very little patrol and investigative time is spent on high-risk, dynamic action.

Police training, often designed on military training models, further reenforces a crime fighter model. Officer survival skills taught in training are critical. As [John Steinbeck](#) is often quoted in police training, “the final weapon is the brain, all else is supplemental,” police agencies need to recruit, train, develop, and promote officers who demonstrate sound judgement, excellent situational awareness, critical decision-making abilities, and effective public interaction. Studies cited in an April 2020 article in [Police Chief Magazine](#) found that women and officers of color reported opportunities to be role models as their motivation to pursue a police career. Effective recruiting, training, and development, coupled with a supportive culture, prepares a diverse officer workforce to apply the most effective policing model (and mindset) to any situation and master the self-control needed to defuse and resolve tense situations while optimizing public trust.

Negative Public Perception – An Obstacle to Police Diversity

Negative public perception of police poses internal and external barriers within applicant pools – perceptions may vary depending on applicants’ demographics, education, socioeconomic situation, and experience. Police agencies must work to clearly understand public perceptions among different groups and neighborhoods within their jurisdiction. An October 2020 [survey in Maryland](#) reveals a predictably wide gap between Black and White residents with nearly twice as many Blacks reporting an “unfavorable” view of police. As an example, Maryland police agencies must focus on overcoming this unfavorable view by changing external messaging, changing internal policies and procedures, and addressing diverse community’s perceptions with demonstrated performance on a community-by-community basis. Progress and achievements in police services must be widely publicized – internally and externally – within the ranks as well as throughout the communities. For the prospective applicants from communities holding “unfavorable” views of police, it is much harder to pursue career aspirations in police service when faced with ridicule from friends and family.

Negative perceptions are not limited to racial or cultural characteristics. The police profession continues to be viewed as a [male-dominated career field](#). Gender inclusion, like other groups, is vital to aligning police values and vision with those of communities. According to the Pew Research Center, women continue to be vastly underrepresented in sworn police positions. In 2013, [women comprised](#) only 12% of sworn police workforce, while making up 51% of the U.S. adult population. Women face many barriers to police professions, although these barriers are fewer and more subtle than in the past.

In 2016, New Jersey Police Training Commission (NJPTC) changed the Basic Law Enforcement Course Physical Conditioning Testing Procedures that resulted in a significantly higher failure rate among women than men. The previous physical conditioning testing standard produced a 2-4% failure rate for women and a less than 1% failure rate for men. The 2016 new standard increased the gender gap 13 times of women trainees failing the test compared with male trainees. Under the 2016 standards, the NJPTC instituted a series of nine tries for a trainee to pass the physical conditioning test during their *first few weeks* of a five-month basic police training curriculum. Trainees that failed to meet the test parameters on their ninth try were dropped from the academy class. As reported by *USA Today*, in an article by Asbury Park Press, [women trainees failed](#) NJPTC's physical conditioning testing standards at a rate of 31% in 2017 and 27% in 2018, while their male counterparts remained in the low single percentile. Barriers, like those imposed in New Jersey, deny police agencies access to diverse candidates. Physical fitness standards for police vary considerably by jurisdiction. Enhancing physical conditioning programs and trainee evaluation by ensuring direct nexus to job task analysis, while allowing for gender and age variances, coupled with ample structured conditioning time in training has proven effective in removing barriers. Federal agencies, many states, and the military apply data supported variations in standards to account for gender and age while testing at the end of basic training – after trainees are provided structured physical conditioning during training.



Madison (WI) Police Sgt. Sarah Shimko with other Officers of MPD's Mental Health Unit 2020.
Source: City of Madison Police Department ([2020](#)).

Calls for increasing female representation alone in sworn ranks of police agencies can lead to counterproductive tokenism. As part of Los Angeles reform strategies after the Rodney King incident, City Council called for Los Angeles Police Department (LAPD) to achieve over 40% women in sworn rank. Today, LAPD is slightly above the national average, with about 18% women serving in police officer ranks. Targeted hiring and career advancement for the expressed purpose of making change, singles out the targeted group, even gender, creating a special class within the academy sessions and in the department. It produces an unfair culture with unrealistic and disparate expectations. Singling out a certain group or groups is counterproductive if not coupled with whole-of-department transformation strategy to a sustained culture of inclusion.

In terms of promotions and advancement, the special interest “escalator” can create different, but real, problems than the “glass ceiling.” Promotions that lack trust of process fairness and qualification relevance deny the person promoted a [fair opportunity](#) at legitimacy of rank or specialty that is also counterproductive. This form of “targeted balancing” generates higher turnover within the very groups that are essential to creating diversity and contributes to fostering further distrust within broader communities. [Gender mainstreaming](#), a process of assessing implications for women and men, integrates understanding of each group’s experiences and concerns holistically throughout the organization’s structure, hierarchy, operations, and societal dimensions. Mainstreaming is globally proven as an effective approach to achieving sustainable gender equality.

Police Work-Life Balance

Balancing police work with family and daily life poses special challenges for workforce diversity. Police service is a stressful occupation. Dr. Ellen Scrivner, former deputy superintendent for administration at Chicago Police Department observed that the police officer may [witness more human tragedy](#) in a few years of their career than the average citizen experiences in a lifetime. Those experiences, coupled with the dynamic demands of the job, pose a strain on police families as well. Policing is particularly challenging for women to navigate work-life balance. Additionally, in the modern family structure, police careers pose challenges for single parents and families in which both parents work. Balancing family with work is a higher priority with upcoming officers today than in was the past.

Shift work, unpredictable hours and job-related stresses pose universal barriers to the profession with varying impact by group. In a [July 2019 report](#) by the U.S. Department of Justice, National Institute of Justice (NIJ), one police department reported a number of innovative accommodations to address officers’ child care needs. Although family balance accommodations greatly assist women officers, the department noted that an increasing number of male officers are taking advantage of family services, including the departments child care assistance. Officers caring for elderly and special needs family members face similar challenges with their career balance.

Police Recruiting & Officer Development – Meeting Community Needs

All police departments and law enforcement agencies draw men and women from American communities and – once selected, trained, and hired – the workforce continues to be a part of the communities. While the workforce may reside outside of the actual agency

jurisdiction, these men and women spend their work hours *as a part of* the jurisdictional community. Effective policing also requires the trust and vigorous support of the community to prevent and report suspected criminality. Very few criminal investigations are closed solely on forensic scientific evidence. Citizen support is essential.

Out of the escalating policing challenges in the 21st century, police departments are afforded unprecedented motivation to change the organizational culture and workforce to rebuild community trust. Providing career opportunities that attract an inclusive applicant pool include mainstreaming police workforce diversity, effectively attracting community representation, building a guardian spirit of service, while retaining important officer survival skills.

This article is Part 2 of a four-part series on New Age of Police Reform. The next part will review prominent trends in police accountability, procedural justice, and use of force:

- Podcast – [Law Enforcement’s Perfect Storm 2020](#)
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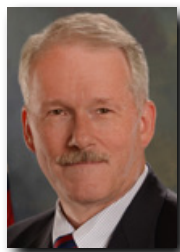
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The New Age of Police Reform – Part 3

By Joseph W. Trindal

Accountability and transparency are prominent features of modern police reform. Yet, the concepts and structures for holding police accountable trace back to the origins of modern democratic police service in London, UK. A key motivation for creating public police service was the lack of accountability afforded by private police services – the watchman model. With Americans’ deeply embedded concerns over governmental excesses, layers of oversight have been imposed on police departments and agencies over U.S. history. The modern digital age poses new challenges and opportunities for police agencies to earn public trust through transparency. Modern technologies also pose serious obstacles to important due process in accountability of police services.



The public’s trust in police has been at the core of police reform movements going back to the Metropolitan Police Act of 1829 in London. Police accountability and transparency is an essential character of democratic policing principles. Today, both communities and police departments have much *greater* opportunities for transparency. Although technological advances for both citizens and police enhance transparency, the accountability factor becomes more complex. Transparency without due process impedes true accountability. The public must have confidence in the integrity of due process in police accountability.

Technologies, such as the ubiquitous use of cellphone cameras, speed of uploads to social media, and the proliferation of social media, all converge to eclipse due process for police actions in the global court of public opinion. The speed and global scope by which citizen “reporters” can publicize media and commentary also challenges mainstream journalistic ethical standards. Simply, there is no due process in the court of public opinion. As the public loses trust and confidence in judicial and departmental due process, the court of public opinion becomes more virulent.

Separation of Powers & Judicial Oversight

Under the constitutional doctrine of [separation of powers](#), the three branches of government (executive, legislative, and judiciary) have separate and distinct, but overlapping responsibilities that serve as checks and balances. Police – whether federal, state, local, territorial, or tribal – are within the executive branch of their respective jurisdictions. (Two notable exceptions are the U.S. Supreme Court Police and the U.S. Capitol Police.) The courts regularly review the actions and omissions of all law enforcement agencies and personnel. Judicial review of police is the longest enduring form of police oversight in the U.S. justice system.

The common law principle of *stare decisis*, the precedence of judicial decisions on future litigation, is a powerful tool the courts have over police policy, practices, training, organizations, and procedures. There are many examples in which appellate and federal court decisions have changed the course of policing nationwide. The U.S. Supreme Court has altered police

procedures by applying constitutional interpretations that affected the legality of evidence. The landmark cases of *Mapp v. Ohio* ([367 U.S. 643](#), 1961) and *Miranda v. Arizona* ([384 U.S. 436](#), 1966) applied U.S. Constitution protections through the exclusionary rule, denying admissibility of evidence obtained through warrantless search (Mapp) or self-incriminating statements without opportunity of access to legal counsel. Both cases, imposed national changes to police search, booking, and interview procedures. At the time, these landmark federal cases also strengthened the U.S. Supreme Court's *stare decisis* over the state courts, and thus local police departments, through the selective incorporation doctrine of the U.S. Constitution's Bill of Rights. Both cases dramatically changed police procedures, resulting in strong judicial oversight of police action and advancing constitutional protections.

Federal and state courts have issued binding decisions affecting police use of force policies, training, and procedures. Two of the most prominent governing lawful deadly force standards relevant to modern reform considerations are *Tennessee v. Garner* ([471 U.S. 1](#), 1985) and *Graham v. Connor* ([490 U.S. 386](#), 1989). The U.S. Supreme Court, in *Garner*, set police use of deadly force parameters in fleeing felon situations. Clarifying a 1973 case that addressed excessive use of force, the court ruled in *Connor* that an [objective reasonableness](#) standard is to be used in reviewing all police use of force cases by expanding the applied interpretation of Fourth Amendment protection against unlawful seizure. Also in the *Connor* case, the court set forth the prongs for determining reasonably proportionate police use of force. Subsequent cases have refined aspects of police use of force policies, training, and procedures to include addressing the introduction of electronic control devices (e.g., Taser®).

Important judicial rulings that bring to light past police officer misconduct and dishonesty are found in the cases of *Brady v. Maryland* ([373 U.S. 83](#), 1963) and *Giglio v. United States* ([405 U.S. 150](#), 1972). These landmark rulings, together with [other relevant cases](#), establish a due process requirement for prosecutors to disclose exculpatory and material evidence, even that which may be favorable to the defendant's case. In *Giglio*, the court applied *Brady* rule logic to clarify that the prosecutor's duty to disclose information about the prosecution's witnesses, including police witnesses. Material information under the *Brady/Giglio* duty-to-disclose rule includes police personnel records related to the witness-officer's integrity and credibility. To be clear, under *Brady/Giglio*, prosecutors can still call police officers with tarnished credibility to testify. The defense will have information with which to impeach the officer's credibility under cross examination, and the jury is afforded the opportunity to weigh the value of the officer's testimony in light of the derogatory information. Defense may also use *Brady/Giglio* information in motions to suppress testimony or evidence. In cases where the tarnished or questionable officer is the principal witness or an affiant to a warrant, the officer's credibility may weaken or dismantle the prosecution's case.

Over the years since *Giglio*, prosecutors have had to account for officer credibility in deciding prosecutorial and trial strategies. In 2018, St. Louis (MO) Circuit Attorney Kim Gardner [announced the decision](#) that her office would no longer accept criminal cases from over two dozen city police officers. A statement from the St. Louis Circuit Attorney's office observed that "A police officer's word, and the complete veracity of that word, is fundamentally necessary to doing the job. Therefore, any break in trust must be approached with deep concern."

The U.S. Department of Justice's (DOJ) [Giglio Policy](#) established a requirement for DOJ agencies to research and disclose potential impeachment information of its employees, including law enforcement officers and agents, to assist U.S. attorneys upon request. DOJ defines potential impeachment information as including a number of credibility-related matters such as integrity-related misconduct findings or pending misconduct allegations as well as information that suggests bias for or against a defendant. The Brady/Giglio rule is a powerful tool for police leadership and prosecutors to work together in ensuring police personnel uphold the highest standards of honesty and integrity throughout their careers.

There is no statute of limitations on the Giglio impeachment information. Some prosecutors maintain lists of police officers deemed unfit as material witnesses. Often referred to as Brady or Giglio lists, an officer may be placed on such a list based on an assistant prosecutor's subjective interpretation of the rule or an ongoing administrative investigation. Some departments have used the prosecutor's uncredible-officer list as a pretext for removal. In one such case in Mountain Terrace Police Department (WA), the terminated officer successfully sued to recover his job and a [\\$815,000 settlement](#) for wrongful termination based on the prosecutor's listing of the officer.

With 18,000 state and local police departments and federal law enforcement agencies, the standardized application of case law across police policies, training, and procedures with the power of judicial oversight – in the form of evidentiary exclusion and legal redress through litigation – provides strong accountability of police practices. However, the courts' power to impact police procedures is, by design, reactionary. A case must be brought before the court with jurisdictional venue and case appealed to sufficient level (i.e., U.S. Court of Appeals, State Supreme Court, or U.S. Supreme Court) to have broad influence.

Standards in law enforcement training generally require officers and agents to demonstrate their understanding of the case laws behind the agencies' policies and procedures through testing and practical application in training. For most agencies, the frequency of in-service training cycles is insufficient to ensure uniform, consistent application. Departmental leadership, particularly among first line supervisors, is a critical part of the judicial oversight through ensuring officers' continued knowledge of applicable case law and insisting on officer performance in conformity.

Qualified Immunity – Legal Battles Ahead

The doctrine of qualified immunity for public officials has a controversial history. The origins of the qualified immunity trace to a 1967 U.S. Supreme Court case brought under the [Title 42 U.S. Code §1983](#) federal statute, updated from the Civil Rights Act of 1871, that opened the federal courts for redress of violations of civil rights under “color of law.” By virtue of the Civil Rights Act of 1871, the federal courts were afforded jurisdiction over violation claims involving state and local government actors through the equal protection clause of the 14th Amendment of the U.S. Constitution as well as opening the way for selective incorporation of the Bill of Rights.

In 1967, the case of *Pierson v. Ray* ([386 U.S. 547](#)) stemmed from a 1961 arrest and mixed convictions/dismissal of charges for failure to obey segregation rules at a bus station in Mississippi (MS). The MS statute upon which the charges were based was subsequently found to be unconstitutional in a separate case and after the Pierson arrests. The U.S.

Supreme Court held that a qualified immunity existed for the municipal police justice and the arresting officers based on the prongs of acting in good faith and with probable cause pursuant to a statute they believed to be valid at the time. Chief Justice Warren, in writing the majority opinion, noted that common law “never granted police officers an absolute and unqualified immunity.”

Subsequent Supreme Court decisions have clarified, and to some degree confused, the doctrine with an objectively reasonable criteria (*Harlow v. Fitzgerald*, [457 U.S. 800](#), 1982) and clearly established law (*Pearson v. Callahan*, [555 U.S. 223](#), 2009) criteria. In the 1987 U.S. Supreme Court ruling in *Anderson v. Creighton* ([483 U.S. 635](#), 1987), the court noted that “qualified immunity protects, ‘all but the plainly incompetent or those who knowingly violate the law’.” The court added:

We have recognized that it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and we have indicated that in such cases those officials – like other officials who act in ways they reasonably believe to be lawful – should not be held personally liable.

This is an important point applied to “other officials,” as the court stated. For example, the Medical Malpractice Immunity Act (Title [10 U.S.C. §1089](#)) provides personal liability protection for federal medical personnel from tort claims arising from their performance of official duties. The act provides for the U.S. government to be substituted

Police reform issues include separation of powers, qualified immunity, oversight boards, and the role of the federal government in police accountability.

as defendant. Drawn from the Federal Tort Claims Act (28 U.S.C. Part VI, Chapter 171 and §1346), a limited waiver of the common law doctrine of sovereign immunity is established, permitting defendant substitution to protect federal officials from personal liability from tort claims brought against their performance in official capacity. An important distinction between the qualified immunity doctrine and statutory liability protections is the legislative action of passing a bill versus the U.S. Supreme Court, in essence, creating a law from the bar.

Today, the qualified immunity doctrine, applied to police, is under considerable scrutiny. Although the U.S. Supreme Court continues to apply qualified immunity in applicable rulings, many legal scholars believe the doctrine is judicial overreach. In the 2017 U.S. Supreme Court case of *Ziglar v. Abbasi* ([137 S.Ct. 1843](#)), Justice Clarence Thomas wrote in his concluding opinion, “Our qualified immunity precedents instead represent precisely the sort of ‘freewheeling policy choice[s]’ that we have previously disclaimed the power to make.” Thomas was questioning the Supreme Court’s creation of an immunity protection where it is not clear any existed under law. Thomas added:

Until we shift the focus of our inquiry to whether immunity existed at common law, we will continue to substitute our own policy preferences for the mandates of Congress. In an appropriate case, we should reconsider our qualified immunity jurisprudence.

Qualified immunity is an affirmative defense that must, in most cases, be raised by the defendant-public official. In claiming a qualified immunity defense, the defendant must show that their actions and decision making at the time of the event meet the criteria established in case law.

The [Justice in Policing Act of 2020](#) is a bill that passed the U.S. House of Representatives but failed to be taken up by the U.S. Senate. This act calls for eliminating the qualified immunity defense by amending 42 USC §1983 to read, in part, “It shall *not* be a defense or immunity to any action brought under this section [§1983] against a local law enforcement officer or a State correctional officer” (Sec. 102).

In Colorado, the Enhanced Law Enforcement Integrity Act of 2020 strikes the qualified immunity defense in civil actions alleging deprivation of rights. The statute also provides that the “peace officer’s employer shall indemnify its peace officers” unless the employer determines that the officer did not act in good faith and reasonable belief that the action was lawful. If the officer’s department determines not to indemnify the officer, the officer is personally liable for 5% of the judgement or settlement or \$25,000, whichever of these is less. The statute also provides that if the officer is unable to pay their portion of the judgement, the department or insurance will satisfy the judgement. Lastly, if the civil judgement arises from a criminal violation that results in an officer’s conviction, the department is not required to indemnify the officer for the judgement or settlement.

Police & Independent Oversight Boards

Police accountability through oversight boards is a well-established approach for developing and strengthening public consent. Civilian oversight of police services in the United States traces back to the 1920s when the Los Angeles Bar Association created a Committee on Constitutional Rights comprised of volunteer attorneys responsible for investigating complaints of police misconduct. In the post-World War II period, citizen oversight became more common in major cities, such as the Philadelphia Police Advisory Board (PAB) and Compliant Review Board (CRB) of Washington Metropolitan Police in the 1950s.

The trend for creating and supporting civilian oversight withered in the 1960s. Then, the 1969 Kansas City Office of Civilian Complaints revived civilian oversight, which has continued to grow dramatically into the 21st century. According to the National Association of Civilian Oversight of Law Enforcement ([NACOLE](#)), there are over 200 civilian oversight boards across the nation. The [United Nations](#) and many countries have adopted civilian oversight models as global best practices toward police accountability. The African Commission on Human and People’s Rights adopted a resolution in 2006 urging member nations to establish civilian oversight boards through standardized guidance of the African Policing Civilian Oversight Forum ([APCOF](#)).

Despite there being over 200 civilian oversight boards, the U.S. has no national standards for police oversight boards. In 2018, the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) and the Major City Chiefs Association (MCCA) hosted a roundtable with 21 police agency representatives from the U.S. and Canada to develop an overview of various civilian oversight models. The [Civilian Oversight of the Police in Major Cities](#) report reflects three primary models: The Investigative Model, The Review Model,

and The Auditor Model. They also noted that, although many civilian oversight boards could be characterized with the three models, many others did not fit any model. The report also identified six optimal objectives for civilian oversight boards: foster transparency, promote independence, strengthen accountability, enhance public trust and legitimacy, engage the community, as well as “demystify” police internal affairs investigative processes.

Current trends are expanding the powers of some civilian oversight boards. On 28 October 2020, Virginia Governor Ralph Northam [signed two bills](#) authorizing localities to create civilian law enforcement review boards, with subpoena powers and binding authority over disciplinary decisions involving department police officers. Similar laws and ordinances in other states are expanding oversight board authorities with some creating layers of oversight boards. Many police collective bargaining units (unions) are expressing opposition to more civilian board empowerment, particularly granting subpoena power to compel officers to testify.

Many police unions assert that compelled officer testimony threatens to undermine the department’s investigative integrity and violates some union contracts. NACOLE points out that, while oversight boards need the ability to obtain information in order to perform the community’s oversight function, obtaining and using subpoena authority poses special challenges. Enforcing civilian board subpoenas in a court of law can be a costly, time consuming process. The 1967 U.S. Supreme Court case of *Garrity v. New Jersey* ([385 U.S. 493](#)) limits departments’ abilities to compel statements from police officers in administrative investigations.

In August 2020, the New Jersey Supreme Court struck down a Newark City ordinance empowering the Civilian Complaint Review Board’s (CCRB) subpoena authority in investigating police misconduct cases. While committing to continue to fight for CCRB to have subpoena power, Mayor Ras Baraka stated that the New Jersey attorney general modified statewide policies governing police internal affairs units requiring the release of certain investigative records to civilian oversight boards. The CCRB is New Jersey’s only civilian oversight board today.

Like many other aspects of police reform, the roles and authorities of civilian oversight boards are dynamic. There are many stakeholders involved with the question of due process protections as a core constitutional right of the accused officer.

Role of the Federal Government in Police Accountability

The federal government’s role in national police reform is another major issue today. The federal government is taking ever-increasing roles in state and local policing oversight. The U.S. Department of Justice (DOJ) is principally responsible for oversight and federal assistance to improving police practices. The DOJ’s oversight is principally in the form of legal actions brought under suspected patterns-and-practice violations, and discrimination “under color of law” violations among other authorities. The DOJ’s [Civil Rights Division](#) (CRT) litigations can lead to court ordered settlement and consent decrees in which DOJ oversees monitor teams in verifying the progress of covered police departments in implementing corrective actions. DOJ also provides wide-ranging technical assistance, principally through the [Community Oriented Policing Services](#) (COPS) Office, in the form of working groups, training,



equipment, as well as research and studies publications. COPS also manages a grants program to support improving policing capabilities. Other DOJ support to state and local law enforcement includes data collection and reporting, with grants program, out of the [Bureau of Justice Statistics](#) and other DOJ elements.

In the 21st century, the DOJ has increased the volume of investigations to look into allegations of police

departments' patterns and practices of unconstitutional or otherwise unlawful conduct. The DOJ Civil Rights Division [reports](#) that existing and new police reform agreements more than doubled between 2011 and 2016. According to a 2018 DOJ Office of the Inspector General (OIG) [report](#) on DOJ Civil Rights activities, the DOJ achieved an 84% settlement rate in patterns and practice cases involving police departments between 2011 and 2017. These case settlements result in court-ordered consent decrees enabling DOJ and the court to oversee corrective reforms.

Evidence-based police performance improvement and transparency require data collection, analysis, and reporting. The Violent Crime Control and Law Enforcement Act of 1994 ([Public Law 103-322](#)) includes a provision requiring the U.S. attorney general to gather police officer use of force data. The act further stipulates a use limitation that the data collected are for research and statistical purposes and must be devoid of victim and officer identities.

The [Justice in Policing Act of 2020](#) devotes considerable attention to national collection of police performance, patterns, and practices data. In section 118, the bill would require federal, state, and local agencies to collect and submit to DOJ incident data that include race, ethnicity, age, and gender of officers, agency employees, and members of the public involved. Additionally, the bill would require the DOJ to create and manage a National Police Misconduct Registry. The federal, state, and local police agencies would be required to report data on credible complaints, complaints pending review, complaints involving disciplinary action, and complaints in which the officer is exonerated with each category – breaking out use of force incidents separately. Also, the bill would require reporting on all officer terminations, lawsuits, and settlements with use of force situations broken out in the data.

Under the Police Reporting Information, Data, and Evidence (PRIDE) portion of the Justice in Policing Act, the use of force incident quarterly reporting requirement would include “use of a firearm, Taser, explosive device, chemical agent (such as pepper spray), baton, impact projectile, blunt instrument, hand, fist, foot, canine, or vehicle against an individual.” Extensive incident details would be required to be reported, including rationale for why courses of

action were *not* taken. Other provisions of the bill's reporting requirements include specific incident details, which in aggregate would require considerable departmental staff resource to achieve compliance.

The Justice of Policing Act, as passed in the House, makes no distinction as to size of the department. Even very small police departments, less than 10 employees, would have the reporting requirement or risk loss of or inability to apply for DOJ grant funding. Police agencies have long recognized the importance of data analysis applied in policy and training changes. Many departments publish internal police performance data to the public in building trust through transparency. In July 2020, Montgomery County Police Department (MCPD) published a report entitled "[Local Policing Data and Best Practices](#)" to meet Maryland's Community Policing Law, which will be effective in February 2021. MCPD points out that "policing data is warranted to evaluate and monitor for constitutional and community policing."

The calls for improving national policing data collection and information sharing is bipartisan. The president's [Commission on Law Enforcement and the Administration of Justice](#), created in January 2020, highlights the need to develop better national data collection and transparency. The commission is charged with, among other initiatives, reviewing current systems and evaluating gaps in data collection and utilization with a focus on a National Incident-Based Reporting System and Use of Force reporting. In June 2020, President Donald Trump signed the [Safe Policing and Safe Communities](#) Executive Order (EO) 13896 in part directing the DOJ to create and maintain a database of use of force incidents and police decertification actions. The EO adds that the data is to be shared across federal, state, local, and tribal law enforcement agencies.

Police Decertification Information Sharing

Most states certify police officers who are authorized with arrest powers within that state. Standards for requisite training, background check criteria, certification processes, and decertification processes are most often managed or overseen at the state level. State requirements vary considerably, though. Some states such as New York, California, and Massachusetts lack authority to decertify police officers. However, in the four states that lack full police officer certification and decertification authority, private security guards are required to hold state certification or licensure. Federal law enforcement officers are not nationally certified, but rather authorized by their employing agency with law enforcement authorities under the agency's authority, which is removed when a person leaves the authorizing agency. States like Massachusetts are working to strengthen certification and training standards oversight. As Massachusetts addresses legislation to create a state Police Officer Standards and Training (POST) system, a [2019 study](#) by the state auditor noted that as many as 30 police departments may not meet state POST standards for training requirements.

In states with police officer certification, many do not require departments to initiate decertification with the state authority when an officer is terminated, even for cause, from employment. This enables a terminated officer, or officer who resigns in lieu of termination, to carry their active police officer certification while shopping for another job in law enforcement. To add complications to the decertification issue, termination information is subject to widely varying privacy protections accorded by the states. A former police officer, fired for cause, can

be hired by another department void of access to cause for release from previous agency and start working immediately because their peace officer certification remains valid.

Calls for a national decertification database have been raised for a number of years. The International Association of Directors of Law Enforcement Standards and Training ([IADLEST](#)) has served as a certifying body for state POST training since well before its name change in 1987. The DOJ COPS awarded IADLEST a [grant](#) in 2020 to promote certification standards in all states, compliance by local departments, and expansion of IADLEST's [National Decertification Index](#) database. Some states already maintain [decertification lists](#) and some make those lists public, like Connecticut's POST Council.

Conclusion

Improving and strengthening public trust and police legitimacy in the digital age is complex. Greater use of citizen oversight boards and leveraging digital tools to collect and share improved data opens opportunities for greater public awareness. Better collection, analysis, and application of policing data is essential for informing the public as well as developing and explaining evidence-based reforms. Lastly, the digital age provides excellent information sharing opportunities about police misconduct-based personnel removals. Certification, like licensure in other professions, should apply nationally uniform standards for decertification while permitting the states to retain their sovereign authority over police services.

The challenges rest in developing and implementing sound legislation, policies, and strategies that respect and preserve every employee and person's right to due process while improving public trust in police performance.

This article is Part 3 of a four-part series on New Age of Police Reform. The next part will provide an overview of some of the intergovernmental challenges in police reform:

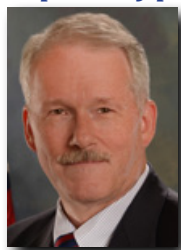
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- Part 3 – [Police Accountability & Oversight: Redundancies & Opportunities](#)
- Part 4 – [National Police Reform: Intergovernmental Friction & Cohesion](#)
- Podcast – [Law Enforcement's Tsunami of Change 2021](#)

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The New Age of Police Reform – Part 4

By Joseph W. Trindal

It is yet to be determined if the intense calls for police reform and social justice are principally fueled by a contentious presidential election year or if the momentum behind public pressure for change will withstand political uncertainty. Building public pressure for police reform has transcended the political parties in the White House. The current demands for reform would most assuredly have shaped the next administration's domestic agenda regardless of final presidential election results. This article examines aspects of police reform initiatives under a new administration.



The nationwide drive behind the 2020 police reform initiatives are unique in modern times. Unlike previous modern national police reforms, the 2020 initiatives are taking widespread root in city and local governments. An aspect of “police reform” at the local level is really changing public safety response to communities in general. In most jurisdictions, public safety communications specialists, dispatchers, only have three options for response to calls for service: (1) fire, (2) Emergency Medical Service (EMS), and/or (3) police. Therefore, if the 911 call for service does not clearly involve something burning or a medical emergency, the call is referred to the police, by default. These types of calls for service commonly include erratic behavior, suspicious noise, suspicious object, suspicious person, and various frivolous calls. Of course, a percentage of the calls for service are true police emergencies, but most are some form of public service.

Depending on departmental policies, dispatchers have little discretion to discern the veracity of the caller’s complaint and seldom are dispatchers afforded alternative options to a public safety response. As part of police response reform, many local jurisdictions are studying alternatives to police response. The Center for American Progress and the Law Enforcement Action Partnership have recently completed a study on 911 calls and offer insights into a civilian [Community Responder Model](#). Jurisdictions like Eugene, Oregon have instituted community responder programs with positive results. Trained civilians are available to 911 operators to respond to quality-of-life calls and low-risk situations.

The presumptive President-Elect Joe Biden’s [criminal justice policy](#) calls for expanding federal funding for mental health and substance abuse, as alternative to criminal justice solutions. Specifically, the Biden policy proposes to “help police officers learn how to better approach individuals with certain disabilities” and “[social and mental health] service providers will respond to calls with police officers” to divert them to treatment, housing, or other social services.

In a July 2020 survey of police agencies by the [Police Executive Research Forum](#) (PERF), nearly half (48%) of the 258 respondent agencies reported experiencing or expecting budget

cuts this fiscal year. The majority of the police agencies reported budget cuts of 5-10%. In the survey, Chief Michel Moore of Los Angeles (CA) Police Department stated, “Our challenge is to make sure that staffing is sufficient to meet our call load, and also sufficient to conduct community engagement, because building trust and relationships is really the core function of community safety.” Cutting budgets, as a police reform measure, fails to relieve demands on police to certain types of calls for service. High demand with fewer resources adversely impacts effective community engagement and increases risks to public safety as well as to police officers. In the PERF survey, Chief Joseph Bartorilla of Middletown Township (PA) Police Department observed, “When police turn into pure responders, with little to no proactive work, crime and disorder will almost certainly increase in just about every community, and

especially in the mid- to larger-sized cities.” Cutting police funding absent reshaping the public safety response structure fails in serving communities with the greatest needs.

The SAFE Justice Act points to many state reforms that have reportedly resulted in effective deterrence, lower recidivism, focused incarceration on the most violent and dangerous offenders, combined with a range of release and diversion initiatives.

The Biden criminal justice policy proposes, in part, to concentrate on improving community-oriented policing with a \$300 million investment to state and local departments through the Department of Justice (DOJ) Community

Oriented Policing Services (COPS) program. “Police departments need resources to hire a sufficient number of officers,” according to the Biden policy. As strongly reflected in [Justice in Policing Act of 2020](#), which passed the House of Representatives but failed in the Senate, the Biden policy proposes to apply police reform conditions to the COPS program funding. The Biden policy states, “As a condition of the grant, hiring of police officers must mirror the racial diversity of the community they serve. Additionally, as president, Biden will establish a panel to scrutinize what equipment is used by law enforcement in our communities.”

Trends & Reforms Related to Incarceration

An aspect of criminal justice reform movements focus on the incarceration rates in the United States. The Institute for Criminal Policy Research’s (ICPR) most current [World Prison Brief for 2018](#) pointed out that the United States has the world’s highest incarceration rate of 655 per 100,000 population. According to the DOJ Bureau of Justice Statistics (BJS) [Prisoners in 2019](#) report, federal and state incarceration rates have been on a steady decline since 2009; dropping 17% through 2019. Reflecting the overall lowest incarceration rate since 1995, a trend that is in line with criminal justice reform objectives.

Public safety response alternatives and police discretion have a relational correlation to incarceration. Like the 911 dispatchers’ limited discretion in calls-for-service response options, police are also afforded limited discretion. Alternatives to arrest have been a focus of much of the public discourse on criminal justice reform. For example, public questions surrounding the tragic June 2020 shooting of Rayshard Brooks in Atlanta during the police attempt to arrest Brooks for suspected driving while intoxicated. When Brooks was found

by police asleep behind the wheel of his car in the Wendy's restaurant drive thru line, police administered field sobriety tests and a breath test resulting in a recording of [0.108 blood-alcohol level](#). Brooks, who had been compliant with officers to the point of arrest, resisted and gained control of one of the officer's electronic control device. With the less-lethal weapon, he fled and allegedly pointed the Taser at the pursuing officers when he was fatally shot.

In a [15 June 2020 interview](#), WUSA9 probed the police discretion question with former New York Police Department (NYPD) detective Kirk Burkhalter. WUSA9 posed the question, "Should incidents like this one, where he [Mr. Brooks] admitted to being intoxicated and offered up alternatives to getting home, end in arrest?" Burkhalter's answer was "that's up to the legislature," adding that "generally speaking, that's determined by statute." Police officers' discretion is subject to immediate supervisor review, departmental administrative or internal investigation, and potentially judicial review. Statutes and departmental policies have curtailed police discretion in the interest of accountability and transparency. Although police are expected to use prudent discretion as to the force used in an arrest, they have less discretion in determining *whether to arrest* or seek an alternative solution.



The Biden policy proposes to federally decriminalize cannabis for medical use, as [16 states](#) have done for recreational use and all but six states have legalized for medical purposes. In addition to cannabis decriminalization, the Biden policy proposes to "automatically expunge prior convictions." The policy also signals an intention to expand federal funding into alternatives-to-detention courts, advancing a [2017 study](#) by United States Sentencing Commission (Commission). Building upon alternative sentencing options provided in the Commission's original *1987 Guidelines Manual*, the 2017 study promotes the use of specialized courts and "problem-solving" courts as avenues for sentencing options and diversion, in lieu of incarceration. The Biden policy also provides considerable attention to juvenile justice reforms.

Three years ago, Congressman Bobby Scott (D-VA) introduced the Safe, Accountable, Fair, Effective Justice Act ([SAFE Justice Act in 2017](#)) as comprehensive reform legislation to federal sentencing and the corrections system. The Biden policy urges passage of the SAFE Justice Act as an evidence-based path for reforms in sentencing, corrections, rehabilitation, and treatment. The SAFE Justice Act points to many state reforms that have reportedly resulted in effective deterrence, lower recidivism, focused incarceration on the most violent and dangerous offenders, combined with a range of release and diversion initiatives.

DOJ Investigations of Police Unconstitutional Patterns & Practices

During President Barack Obama's Administration, the DOJ [expanded investigations](#) of police agencies under the Law Enforcement Misconduct Statute ([Title 42 United States Code §14141](#)). The Biden policy proposes to "prioritize the role of using pattern-or-practice investigations to strengthen our justice system." The Biden policy intends to push for legislation clarifying that DOJ's pattern-or-practice investigation authority can also be used to address systemic misconduct by prosecutors' offices." Broadening DOJ authority to investigate patterns and practices of prosecutors' offices signals a major change.

DOJ reform agreements with state and local police agencies, pursuant to §14141, have proven a useful reform tool since 1997, when Pittsburgh (PA) was the first city to sign a consent decree after findings of patterns or practices in an investigation of excessive use of force and other systemic issues. Critics, however, have pointed to the unsustainability of maintaining costly [consent decree mandates](#). Others, like Superintendent Michael Harrison of Baltimore (MD) Police Department argue, "This consent decree, like New Orleans', requires an intense makeover, a 100 percent makeover," as reported by the [Baltimore Sun](#) in 2018. Harrison led two police departments through DOJ consent decrees. Some police executives realize that they are unable to garner the local political will to fund and support police training and community programs absent threat of DOJ oversight and potential litigation with costly consent agreement implementation and vigorous monitoring.

Change is Certain, Regardless of the Presidential Election Results

While there is much uncertainty in the avenues of police and, broader, criminal justice reforms, the one certainty about police reform is that services and procedures are changing. State and local police reform initiatives are pervasive and vary widely. The Georgia legislature sought to place a vote to [abolish](#) the Glynn County (GA) Police Department on the ballot, over the objections of the county commissioners, who ultimately prevailed in stopping the measure with a lawsuit.

The DOJ needs to lead the nation by promoting model policing standards with grants funding that builds upon the transformative successes demonstrated by COPS and Bureau of Justice Assistance [programs](#). Congressional bipartisan support and funding is needed for data-driven, evidence-based enhanced police services. Incentivizing national best practices is far more effective in developing the kinds of "intense makeover" that Harrison achieved for two departments. Police reforms must be sustainable. To achieve sustainability, there must be buy-in by the community, the police, and broader criminal justice stakeholders. Police reform must be part of a wholistic strategy for criminal justice reform. With 18,000 police departments in the United States – each facing ad hoc, legislative micro-experiments in reform – the cost is already proving excessive in the loss of innocent lives to undeterred violence. According to a September 2020 update from the FBI's [Uniform Crime Report](#), "murder and nonnegligent manslaughter offenses increased 14.8%, and aggravated assault offenses were up 4.6%" in the first six months of 2020. The damage to professionalism in the police career fields will last for generations as the best, brightest, and most diverse of police candidates are deterred from investing their career choices in locally driven social experimentation.

As St. Paul (MN) City Council considers establishing a “community-first public safety commission,” assessing 911 calls for service is part of the public safety reform planning. The council recognizes the importance of evidence-based information to inform planning decisions. In a recent [article](#), Council Member Rebecca Noecker noted, “I’ve been hearing loud and clear from my constituents, ever since the murder of George Floyd and the protests this summer, that they want us to take a completely systemic look at how we are ensuring public safety.” Council President Amy Brendmoen stated, “like teachers, police are really being asked to do everything these days.” Wholistic studies of community needs for public safety, by interdisciplinary subject matter experts and community leaders, is essential to inform strategies for realigning of police and other resources with community needs.

Professional associations, like the International Association of Chiefs of Police ([IACP](#)), the National Organization of Black Law Enforcement Executives ([NOBLE](#)), the Hispanic-American Command Police Officers Association ([HAPCOA](#)), National Sheriffs Association ([NSA](#)), International Association of Directors of Law Enforcement Standards and Training ([IADLEST](#)), and the Police Executive Research Forum ([PERF](#)) are among the leaders in shaping police reform. These professional associations embody the experience and thought leadership to intelligently shape evidence-based change. Despite the wide-ranging views on approaching change throughout criminal justice sectors, a constant is the desire to improve police serves to all communities with trust and legitimacy across the nation.

This article is Part 4 of a four-part series on New Age of Police Reform. The next part will provide an overview of some of the intergovernmental challenges in police reform:

- Podcast – [Law Enforcement’s Perfect Storm 2020](#)
- Part 1 – [Introduction to the New Age of Police Reform](#)
- Part 2 – [Building Community Trust Through an Inclusive Police Workforce](#)
- Part 3 – [Police Accountability & Oversight: Redundancies & Opportunities](#)
- Part 4 – [National Police Reform: Intergovernmental Friction & Cohesion](#)
- Podcast – [Law Enforcement’s Tsunami of Change 2021](#)

Joseph W. Trindal, PPS, is founder and president of Direct Action Resilience LLC, where he leads a team of retired federal, state, and local criminal justice officials providing consulting and training services to public and private sector organizations enhancing leadership, risk management, preparedness, and police services. He serves as a senior advisor to DOJ, [ICITAP](#) developing and leading delivery of programs that build post-conflict nations’ capabilities for democratic policing and applied modern investigative techniques. After a 20-year career with the U.S. Marshals Service, where he served as chief deputy U.S. marshal and ERT incident commander, he accepted the invitation in 2002 to become part of the leadership standing up the U.S. Department of Homeland Security as director at [FPS](#) for the National Capital Region. He serves on the Partnership Advisory Council at the [IADLEST](#). He also serves on the [IACP](#), International Managers of Police Academy and College Training. He was on faculty as an instructor at George Washington University and has published numerous articles, academic papers, and technical counterterrorism training programs. He has two sons on active duty in the U.S. Navy. A Marine Corps veteran, he holds degrees in police science and criminal justice. He has contributed to the Domestic Preparedness Journal since 2006 and is a member of the Preparedness Leadership Council.

Law Enforcement's Tsunami of Change 2021

Throughout 2020, many public institutions have been tested. Many did not rise to the occasion and embrace the challenges. Many did not exhibit the domestic preparedness stance that they spent years portraying – law enforcement was no exception.

This podcast is the conclusion to a four-part article series on “The New Age of Police Reform.” Learn how law enforcement is seeking to find new ways to overcome modern challenges in an ever-evolving socioeconomic environment. During this 30-minute discussion, the following topics will be discussed:

- Does law enforcement reform mean imminent change?
- How will policing reform affect small and midsized cities?
- Where have [Sir Robert Peel's 9 principals](#) broken down?
- Has the policing role moved from guardian to warrior and back again?
- With a cellphone camera recording many use-of-force incidents, what role does training play in rebuilding public trust?
- Open discussion on civil unrest, terrorism, mental illness, and other domestic preparedness concerns.
- Time will tell if many doomsday predictions will come to pass. I certainly hope they do not, yet we remain resilient.

Listen to [this](#) podcast with Joseph W. Trindal, founder and president of Direct Action Resilience LLC



Our commitment to **BioDefense**
has allowed us to be ready
for the **Ebola outbreak**
in West Africa.

Now, with the **FilmArray system**
and our reliable **BioThreat Panel**,
we are able to test for 16
of the worlds deadly
biothreat pathogens
all in an hour.

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