

DomPrep Journal

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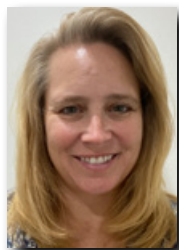
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Putting Plans Into Action

By Catherine L. Feinman



Emergencies and disasters have a way of disrupting the norm. In emergency management, disruption is to be expected. However, the events that plague preparedness professionals in 2020 may have an even greater impact on how communities plan for and respond to disasters going forward. For example, the digital world has increased the ability to share data and information on a broad scale. Unfortunately, this is true for both good and bad information, which compromises the overall accuracy and reliability of the critical information that ultimately reaches key stakeholders. Protecting against [cyberattacks](#) and ensuring accurate information for data-driven decisions requires additional effort than years past.

In the physical world, growing social unrest domestically coupled with increasing threats from foreign actors create a perfect storm for local and federal law enforcement. Locally, law enforcement agencies are toiling over systemic changes to [reform police agencies](#) in order to meet the growing needs of the communities they serve. Nationally, law enforcement agencies prepare to manage terrorist threats and threats from those who wish to use [weapons of mass destruction](#). Together, all levels struggle to build [cohesion](#) within and between their demographically disparate communities.

The year 2020 is a time to remember – a time of natural and human-caused disasters, a time of social and political unrest, and most importantly a time of lessons to be learned. Experts predicted the nation would someday face a [triggered collapse](#), yet it still was not prepared for COVID-19. Experts predict that an even worse case scenario is likely in store for the future. However, planning for a worst-case scenario is only half the battle. The harder part is implementing that plan when it is needed most. Embracing a [data-driven culture](#) and building collaboration among all stakeholders are key actions on the path to resilience in the face of even an unimaginable worst-case scenario.

This edition of the *DomPrep Journal* shares the knowledge of experts who have dedicated their lives to serving and protecting their communities. They not only know how to plan for a disaster, but they actively strive to do something with these plans. This is the time for all DomPrep readers to update old plans, create new plans, and then put these plans into action before the next worst-case scenario emerges.

Publisher's Message

By Martin (Marty) Masiuk

Over the years, I have been privileged to publish many important articles on topics that DomPrep readers have found to be helpful in their day-to-day responsibilities. Late in 2019, our editor, Cathy Feinman, received an unsolicited request from Dr. Drew Miller to publish a series of articles under the broad topic of Triggered Collapse. Cathy was impressed with Drew's terrific credentials – a published author, guest speaker, Air Force Reserve Colonel, intelligence officer, an honor graduate from the United States Air Force Academy. Adding to these credentials, he earned both a master's degree and Ph.D. in public policy from Harvard University – not your typical prepper. I too was impressed. Little did we know then that his submissions to DomPrep would be prophetic.

Reviewing that series of six articles today, I think it worthy to reprint them as a special issue. Not just because they are compelling, but also because they help us reflect on what we knew only then (January to March 2020), what we know now (November 2020), and more importantly, what we need to know for tomorrow.

The “Triggered Collapse” series cites the following key points for DomPrep's readers to reflect and take action on:

- Pandemic influenza, naturally occurring
- Bioengineered virus attack
- Supply chain gaps and vulnerabilities
- Just-in-time inadequacies
- Critical infrastructure interdependencies
- Civil unrest
- Peaceful protests
- Marauders and looting
- Law enforcement reform and officer retention
- An overwhelmed workforce
- An unemployed workforce
- Economic unrest



One of Dr. Miller's points postulates why the federal government was and is not actively taking steps to lean into preparedness. He simply says, “There is no preparedness lobbying for a pandemic as there is for major weapons system acquisition.” Although DomPrep is not totally aligned with some of Dr. Miller's recommendations, we have and continue to agree that the nation should develop a national doctrine of preparedness requiring core competencies as put forward in President George W. Bush's Homeland Security Presidential Directive 8. Perhaps the new administration will incorporate this vital component into its agenda and be ready to respond to a changing world circumstance.

Time will tell if many doomsday predictions will come to pass. I certainly hope they do not, yet we remain resilient.

Tips to Prevent Cyberattacks While Working Remotely

By Tashawn Brown

October was National Cybersecurity Awareness Month. Throughout the month, New York City (NYC) Emergency Management agency shared information to help community members take steps to safeguard their personal information. As the frequency and complexity of cyberthreats continue to increase, it is more important than ever to stay vigilant online. This vigilance should not be confined to a single month, but rather integrated into communities across the country and around the world 365 days a year.



With the COVID-19 pandemic forcing a large portion of employees to work remotely, it is more important than ever to learn how to protect against cyberattacks, which are malicious attempts to access or damage a computer system. Cyberattacks can lead to loss of money, theft of personal information, as well as damaged reputation and safety. They can also disrupt business and infrastructure. [Common cyberattacks](#) include: phishing, which utilizes human interaction to obtain or compromise information; and man-in-the-middle attacks, which involve a cybercriminal inserting themselves into a two-party transaction – possibly capturing sensitive personal information including passwords, usernames, and credit card details.

While companies and organizations take preventative measures to secure their networks, there are also steps individuals can take to protect personal information. In October 2020, NYC Emergency Management Director of Technology Toney Lewis provides the following advice:

COVID-19 has dramatically changed how people work and how children attend school. Remote work means accessing cloud services, juggling video meetings, and accessing your company's network from home. Cybersecurity for remote workers involves protecting three things: Your account, your devices and your connection to the internet. Use strong passwords and multifactor authentication whenever possible to protect your account. Perform software updates regularly and use security software to protect your device. Keeping these things in mind can help protect you from cyberattacks.

Update Passwords

According to the [Cybersecurity & Infrastructure Security Agency \(CISA\)](#), one of the first steps to protecting online information is creating strong and unique passwords for various accounts. Passwords should be difficult to guess and should not include names or other information attackers can find using a basic search or through scanning social media. Having

unique passwords for various accounts helps prevent cybercriminals from gaining access and compromising personal information. Simple steps to creating strong passwords include:

- *Get creative* – A password does not need to be an actual word. Making deliberate misspellings in passwords can help keep accounts safe from hackers.

As remote work rises, so too does the risk of cyberattacks. However, there are simple steps individuals and businesses can take to minimize this growing risk.

Individuals should also ensure their passwords are not easy to guess. This may include incorporating shortcut codes and acronyms.

- *Keep passwords secret* – It sounds obvious, but only the person creating the password should know it. Be mindful of

attackers using emails or calls to trick users into revealing their passwords. Legitimate companies will not request usernames and/or passwords from users via email. An email from a company requesting personal information such as passwords may be a phishing attack, so it is important not to respond.

Avoid Public Wi-Fi

Though it may seem harmless to connect to the free Wi-Fi at a local coffee shop or during a daily commute, it could potentially increase vulnerability to a cyberattack. Public networks can be dangerous because cybercriminals often use such opportunities to attempt to steal private information. CISA advises individuals to [avoid connecting to free or public Wi-Fi](#) even if it is on a secured network. Experts suggest utilizing tethering or hotspots on cellular devices instead of a public Wi-Fi network. Other simple steps include:

- *Disconnect from Wi-Fi* – Change the settings on devices so that they do not automatically connect when they sense an open Wi-Fi network. Public Wi-Fi can include phony rogue networks created solely to attempt to steal personal information. Always turn off Wi-Fi, Bluetooth, and file sharing capabilities when not in use.
- *Guard devices* – Never leave electronic devices unattended while in a public place. Having physical access to a device can make it easier for an attacker to steal personal information.

Multifactor Authentication

As cyberattacks have become more sophisticated, the need to take additional measures to protect personal security is evident. Although having a strong password can significantly decrease the chances of falling victim to a cyberattack, there are also other preventative measures to take, including utilizing multifactor authentication.



[Multifactor authentication or two-factor authentication](#) is a security process that requires more than one method of authentication from independent sources to verify the user. An example of multifactor authentication includes users entering a username and password, which would generate a unique code that is required to enter an account. Multifactor authentication is vital because it offers additional layers of protection and can keep accounts secure even if passwords are compromised.

If a cyberattack is suspected, take steps to limit the damage. Change passwords for all online accounts and monitor finances for unauthorized purchases. If the attack occurred over a company or organizational network, immediately inform the IT department.

For more information about staying safe online visit, <https://www.cisa.gov/national-cyber-security-awareness-month>

You can also check out the latest episode of "Prep Talk," NYC Emergency Management's podcast series. On this episode, the hosts talk with NYC Emergency Management's director for information technology, Toney Lewis, about how listeners can reduce cybersecurity risks and protect themselves online. Lewis provides tips that can help create strong passwords, protect personal devices, identify the most common cyberattacks, and ensure social media accounts are secure. This episode is available on SoundCloud, iTunes, and Spreaker.

Tashawn Brown is the press assistant at the New York City Emergency Management Department, where he has responded to various disasters and emergencies. As press assistant, he assists the press secretary and deputy press secretary in day-to-day press operations and serves as one of the agency's spokespersons, helping to develop and distribute information to the news media. He has been at the forefront of expanding the reach of New York City Emergency Management, connecting with relevant academic and trade publications to promote agency content. Prior to joining NYC Emergency Management, he worked as a research analyst at The City of New York, Mayor's Office of Media and Research Analysis. The author can be reached at (718) 422-4888.

Building a Data-Driven Culture in Emergency Management

By Patrick Champion

Emergency management and public safety agencies are increasingly using data analysis and visualization tools (e.g., Tableau, Microsoft PowerBI, ArcGIS, Google Data Studio) to inform their decision-making and help manage disasters in a multi-threat/hazard environment. In response to the global COVID-19 pandemic, federal, state, and local government agencies rapidly expanded the use of these predictive analysis tools by integrating them into their emergency operations.



Although the pandemic response *catalyzed a wider adoption of these tools and processes*, challenges remain for agencies to realize their value and build their staff's data analysis and visualization skills to fully utilize these capabilities. If agencies at all levels can adopt these tools and make building their analytic capabilities a *strategic priority* over the next few years, agencies will be better positioned to:

- Evaluate preparedness and mitigation initiatives and measure the return on investment (ROI) of these efforts;
- Enhance situational awareness during response operations to help responders make timely evidence-based decisions to save lives and property; and
- Make emergency management a more efficient and lean profession as the scope and complexity of disasters continues to expand.

This article discusses the current use of data analytic tools in emergency management, the challenges that agencies may face in building their data analytics capabilities, and recommendations for building a data-driven culture within emergency management agencies and academic programs.

Current Use of Data Analytic Tools in Emergency Management

Prior to the COVID-19 pandemic, emergency management agencies were [beginning to integrate](#) data analytic tools into their preparedness, response, and recovery/mitigation efforts. For example, the Arizona Department of Emergency and Military Affairs launched their [Operations Dashboard](#), a public facing situational awareness mapping tool that helps the state coordinate its emergency support functions in real time. In addition, the New York State Division of Homeland Security and Emergency Services uses data visualization dashboards to [inform its preparedness strategies](#) gained through its County Emergency Preparedness Assessments (CEPA).

In just a few months, the COVID-19 pandemic response quickly expanded the use of these data analytic tools across the nation. Emergency management and public health agencies began building interactive dashboards to track and analyze COVID-19 case counts, hospitalizations, fatalities, and resource allocation efforts. One prominent agency to fully

embrace these tools was New York City Emergency Management (NYCEM). As Jenna Peters, NYCEM chief of staff described in an email on 21 October 2020:

We standardized and automated data collection and visualization to create a daily senior leadership brief (SLB) with the only comprehensive picture of the ongoing response to help inform decision making. The SLB dashboard, currently distributed to over 1,000 recipients, provides City leadership with critical context and data needed to effectively make decisions and prioritize efforts.

Challenges for Building a Data-Driven Culture

Although the advancement of these data analytic tools over such a short period of time is encouraging, challenges remain for adopting them across emergency management agencies and building a data-driven culture to maximize their value. The good news is these tools are becoming increasingly user friendly. However, there is still a learning curve to understanding them and incorporating their capabilities into emergency management.

An overarching challenge for adopting these tools is how they are embraced by current emergency management leadership, particularly if leadership lacks or has limited training in data analytics. The more open-minded leadership is to technology and process improvement, the more likely analytics will be included in their strategic priorities.

As data analytic tools advance, adoption across emergency management agencies and building a data-driven culture to maximize their value remain challenging.

Achieving buy-in will require analysts to demonstrate that these tools can produce actionable information that leadership can use in complex response situations.

Furthermore, government agencies experience challenges hiring new staff and will continue to as the nation recovers from the COVID-19 economic impacts. If agencies wish to invest in better data analytics, they still face the difficulty of hiring new data analyst positions with limited budgets. At the same time, these skills are continuously sought after by private industry, so governments will have to face competition and offer desirable opportunities to acquire the right talent.

Emergency management agencies now need to determine how to overcome these challenges in the near-term and accelerate their use of data analysis and visualization tools. Also, they also must discover which strategies may help them build a more data-driven culture over the next few years.

The Ideal Data Analytics Culture

As data analytics grows in emergency management, an ideal combination of skills and experience needed would strengthen an agency's analytics culture. Below describes a potential ideal state:



A blend of technical data analysts with emergency management experience/ interest and traditional incident commanders that have an appreciation for and strategic interest in data analytics.

To reach this ideal state, agencies need to determine: how to get there; what practical level of training and education could be offered in the near term to accelerate this growth; and how agencies that experience long response activations, long recovery periods, and limited staffing budgets could incorporate this training and education.

Recommendations for Building a Data-Driven Culture

- *Leadership support* – Like all new endeavors in emergency management, the support of leadership to champion the effort can greatly increase its chance of success. If agency senior officials include *building data analytic capabilities as a strategic goal*, then agencies can set objectives and measure progress toward achieving their targets. Similar to how agencies have invested in cybersecurity and unmanned aircraft system capabilities over the last several years, focused support and funding will help to rapidly evolve the use of data analytics technology.
- *Practical data analytics trainings* – Emergency management agencies are currently comprised of diverse subject matter experts (e.g., first responders, planners, training and exercise specialists) with varying data analytic skill levels. Although data analysis and visualization trainings are available online or directly through technology vendors, these trainings typically do not focus on the specific problems and dynamics that emergency management

staff deal with in both steady-state and response situations. To address this, agencies should invest in *practical data analytics trainings applied to realistic emergency management scenarios* so that participants of all skill levels can develop the fundamentals and become proficient using these tools to solve relevant problems.

- *FEMA Emergency Management Institute (EMI) support* – EMI is the national coordinating entity for the development and delivery of emergency management training. Incorporating practical data analytic trainings into EMI curriculum will help advance the emergency management profession by building these technical skills. With support of the federal government’s premier training institute, more emergency managers will be incentivized to take the trainings, especially if there is an *opportunity to obtain a FEMA EMI certificate* by completing a course. FEMA EMI currently offers these trainings for the application of other technologies in emergency management (e.g., communications, cybersecurity), so data analytics is a logical future offering.
- *Incorporate data analytics into emergency management academics* – Academic institutions that offer emergency management and homeland security-related degrees should prioritize curriculum that gives students technical skills to take into the profession. By incorporating data analytics curriculum *in the form of semester-long, lab-based courses*, students will build proficiency in these tools and processes before entering the workforce instead of having to learn them on the job.
- *Progress toward advanced tools* – Agencies seeking to invest in these tools should purchase them only if they have a plan to *train staff and fully utilize each tool to support operations*. Agencies should avoid buying sophisticated software capabilities if they will only be used by a limited number of personnel and potentially abandoned for simpler processes that the majority of staff and leadership are more comfortable with.

The COVID-19 pandemic catalyzed the use of data analytic tools in emergency management. If emergency management agencies can build on this momentum, there is tremendous opportunity to improve the profession by integrating technology and developing the technical skills of all staff over the next several years. Creating a more data-driven culture can help agencies at all levels be more prepared for and resilient against future disasters.

Patrick Champion is the founder of [Preparedness Advisors LLC](http://PreparednessAdvisors.com), an emergency management and data analytics consulting firm. Preparedness Advisors helps government and private sector organizations be more prepared for all hazards through data-driven solutions and strategic planning support. Prior to forming Preparedness Advisors, he served as a policy and program analyst with the New York State Division of Homeland Security and Emergency Services and is a graduate of the 2020 Emergence Leadership Program with the Naval Postgraduate School, [Center for Homeland Defense and Security](http://CenterforHomelandDefenseandSecurity.com). He would like to thank Jenna Peters and Ben Krakauer of New York City Emergency Management for contributing to this article.

Preparatory Consequence Management & Weapons of Mass Destruction

By Scott J. Glick

The U.S. Department of Homeland Security has stated that the United States faces a rising danger from terrorists and rogue states seeking to use weapons of mass destruction (WMD). If the government learned that a terrorist intended to use a WMD in a major metropolitan U.S. city, senior government officials would need to determine how to resolve the competing interests involved in identifying and stopping the terrorist, while simultaneously preparing to save lives and minimize damage to property. This requires an understanding of how national policies have evolved over the past 25 years and what interagency coordination mechanisms exist that enable the government to effectively coordinate law enforcement and consequence management activities across all levels of government.



When a naturally occurring hazard such as a hurricane threatens the nation, the National Hurricane Center and its dedicated team of specialists use a number of data and analytical tools, such as satellite, radar, and aircraft reconnaissance, to produce reliable, timely, and accurate analyses and to issue guidance, forecasts, and warnings to government officials and the public. These forecasts and warnings then enable a range of preparatory consequence management (CM) planning activities and actions to take place in the days and hours leading up to the event. For example, depending on the level of detail and accuracy of the [forecasts and warnings](#), emergency teams can be alerted, and government officials can order assets to be strategically deployed.

Preparatory CM activities before an impending hurricane clearly can have a positive impact on the government's ability to effectively respond. Government officials at all levels work together to pre-position resources to mitigate the loss of life and facilitate the restoration of essential services without concern of the hurricane being alerted to those activities. If weather predictions are accurate, the hurricane will arrive regardless of the preparatory CM activities that are taking place. Stated another way, "Mother Nature" does not care if the public is warned or is prepared.

Competing Interests

Profoundly different considerations may be present, however, if government officials were to learn that a terrorist was threatening to use a WMD – the [left of boom](#) scenario. Preparing to meet the challenges from such a scenario has unfortunately become a necessity for officials at all levels of government. The U.S. Department of Homeland Security [has stated](#) that the nation faces an increasing threat from terrorists intent on using a WMD to cause mass casualties. Meeting these challenges is complex and, even with perfect planning and coordination, there are competing interests.

First, as stated in the [National Response Framework](#), when a terrorist strategically attacks a target, it can lead to cascading critical infrastructure failures that do not necessarily exist when there is a natural disaster. Second, the range of [potential consequences](#) that can occur when a terrorist is using a WMD will vary depending on the nature and type of the WMD that the terrorist intends to use.



Screen Shot from [News4Jax \(September 8, 2017\)](#): Power crews publicly staging before Hurricane Irma.

Indeed, one of the federal government's [planning assumptions](#) when a terrorist threatens to use a WMD is that the capabilities of state and local authorities will be overwhelmed and the consequences may also challenge the federal government's ability to respond. Third, unlike nature's indifference to preparatory CM activities when the government seeks to [lean forward](#) by surging assets and people into a potential disaster zone, when a terrorist is alerted to certain steps the government may be taking to thwart the terrorist, the terrorist's tactics may [evolve](#), or the terrorist may seek a [target of opportunity](#). Thus, highly visible preparatory CM activities that take place during a credible terrorist threat, particularly one involving the threatened use of a WMD, require complicated [concurrent](#) planning by the law enforcement and CM communities.

Evolving National Policies

During the past 25 years, the federal government has increasingly recognized the need for concurrent planning to address the interdependencies that exist during terrorist threats and incidents. This evolution in national policies began with President William Clinton, when he issued [Presidential Decision Directive \(PDD\) 39](#), Counterterrorism Policy, that stated that the Department of Justice (DOJ)/Federal Bureau of Investigation (FBI) would have the lead crisis management responsibilities for terrorist incidents that took place within the United States, and lead responsibility for CM would be assigned to the Federal Emergency Management Agency (FEMA). PDD-39, however, implied a sequencing of these activities when it stated that FEMA would be in support of DOJ/FBI until such time as the attorney general transferred the lead agency role to FEMA. That division of responsibility and implied sequencing of activities was reinforced three years later when Clinton issued [PDD-62](#), Protection Against Unconventional Threats to the Homeland and Americans Overseas.

After the tragic events surrounding 9/11, a number of key changes were implemented by President George W. Bush that pushed the federal government toward a more unified approach. First, Bush issued [Executive Order 13228](#), which led to the appointment of a key advisor who would be responsible for coordinating domestic response efforts across the federal interagency. Thereafter, Congress passed the [Homeland Security Act of 2002](#),

which established the Department of Homeland Security (DHS). Bush also signed a number of directives, including [Homeland Security Presidential Directive \(HSPD\) 5](#), Management of Domestic Incidents. HSPD-5 was designed to enhance the nation's ability to respond to critical incidents by creating a "single, comprehensive national incident management system."

HSPD-5 made clear that the U.S. government would treat crisis management and consequence management as integrated functions rather than separately. While the attorney general retained lead responsibility for the operational law enforcement response inside the United States, including the criminal investigation of the terrorist acts and the coordination of the other members of the law enforcement community who were responding to the incident, the attorney general was also directed to establish cooperative relationships and coordination mechanisms with DHS, which included [FEMA](#).

New Coordination Mechanisms & Consolidated Functions

HSPD-5 directed the development of a [National Response Plan](#) to align federal coordination capabilities into a unified "all-hazards" approach. HSPD-5 also called for the secretary of homeland security to establish a National Incident Management System ([NIMS](#)) that would enable federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

Since that time, a series of national frameworks, federal interagency operational plans, and incident-specific annexes have been developed, including the National Protection Framework ([NPF](#)), that are designed to enhance the way the whole community safeguards against acts of terrorism, as well as other threats and hazards. The NPF provides guidance to integrate, synchronize, and create a "unity of effort" among the responding jurisdictions and organizations. However, a terrorist threatening to use a WMD could present a dynamic situation that requires senior government officials to make complex and difficult decisions in a more coordinated and integrated manner. As a result, to achieve a unity of effort, the federal government has taken two recent steps to enhance its ability to respond: the establishment of the WMD Strategic Group ([WMDSG](#)) and establishment of a new office with DHS – the Countering Weapons of Mass Destruction ([CWMD](#)) Office.

The [WMDSG](#) is an interagency crisis action team led by the FBI that supports information exchange and deconfliction of the law enforcement and counterterrorism activities that are designed to identify and stop the terrorist and the activities of the CM community to reduce the loss of life and protect property. Through its interagency representatives, which includes FEMA, the WMDSG facilitates the sharing of [real-time](#) investigative information, intelligence, and technical analysis to respond to credible WMD threats.

In the WMDSG, FEMA staffs and manages the Consequence Management Coordination Unit ([CMCU](#)), which provides strategic advice and recommended courses of actions that are coordinated with ongoing law enforcement and counterterrorism operations. The WMDSG's CMCU, therefore, provides a critical link between FBI-led crisis response and FEMA-led CM operations. FEMA's CM planners are able to develop integrated plans with their FBI and

other federal interagency CM colleagues, taking into account different factors when the government seeks to [lean forward](#), including consideration of the impact that certain CM options may have on the law enforcement community's ability to stop the terrorist. Although HSPD-5 may have theoretically fixed what [one former official described](#) as the "ambiguity of authority inherent in separated concepts of 'crisis management' and 'consequence management,'" it was not until the establishment of the WMDSG that effective and integrated federal interagency coordination for WMD-related terrorist threats and incidents would truly be possible in practice. Experiences in the intervening years also led one official in FEMA's Chemical, Biological, Radiological, and Nuclear (CBRN) Office to recently [note in November 2019](#) that leaning forward and repositioning resources to respond to a natural disaster has "changed how we do business in the CBRN realm too."

In the age of weapons of mass destruction, integrated preparatory consequence management and law enforcement planning across all levels of government is critical to protecting the nation.

The second major recent development that has enhanced the government's ability to integrate its response to WMD terrorism has been the reorganization within DHS that consolidated many of DHS's countering WMD-related activities in one office. When the Congress established in law the CWMD Office, [its purpose](#) was to create a focal point for CWMD-related activities within DHS. Among other things, DHS's [CWMD Office](#) is responsible for developing a coordinated internal DHS strategy to enhance DHS's ability to integrate with its federal partners to protect the United States from terrorist use of a WMD.

As a result, with the establishment of the WMDSG and the reorganization of DHS, the federal government is now able to more effectively integrate its crisis management and CM planning and coordination to protect against and prevent a terrorist from using a WMD. These two steps have greatly enhanced the ability of the federal government to respond to terrorist threats and have enhanced the ability of senior government officials to make better risk-informed crisis management and preparatory CM decisions.

The importance of simultaneous crisis management and CM planning and coordination in the context of a WMD-related terrorist event cannot be overstated. As the 2018 nerve agent attack in the United Kingdom ([UK](#)) illustrates, during incidents that involve a WMD, law enforcement officials may be required to work closely with [specialists and scientists](#) to identify and locate a chemical weapon, decontaminate a crime scene and affected areas, and simultaneously conduct a major law enforcement investigation. After watching a detailed presentation by UK authorities that highlighted lessons learned from that response, [one counterterrorism expert emphasized](#) in 2019 that "the complexity of the Salisbury incident enhances the need for continuous training and collaboration among all emergency response agencies and the private sector."

Improving State, Local, Tribal & Territorial Preparedness

When President Barack Obama issued [Presidential Policy Directive \(PPD\) 8](#), National Preparedness, he stated that the responsibility for preparing for threats and hazards should be shared by all levels of government. President Donald Trump has recognized this as well and, in the [2018 National Strategy for Countering Weapons of Mass Destruction Terrorism](#), he noted that federal authorities cannot combat WMD terrorism alone, and that many others, including first responders, play a key role in protecting the nation against WMD threats.

As stated in the January 2020 Homeland Security Exercise and Evaluation Program ([HSEEP](#)), exercises are vitally important to prepare the nation to respond to critical incidents. As a result, the federal government should be working closely with its state, local, tribal, and territorial (SLTT) partners in planning, training, and exercising the simultaneous coordination of the law enforcement and CM communities in scenarios where a terrorist is threatening to use a WMD. Recognizing the critically important role that SLTT governments play in responding to WMD terrorism threats and incidents is essential if the nation is going to effectively protect against and prevent the potentially catastrophic results that might occur if a terrorist was able to use a WMD. To achieve this goal, officials at all levels of government should look for opportunities to plan, train, and exercise together with the WMDSG.

Conclusion

It has been more than 25 years since President Clinton recognized in [PDD-39](#) the importance of developing comprehensive capabilities to prevent and respond to the consequences that could arise if a terrorist threatened to use a WMD. Now that national policies have evolved, many of the countering WMD activities within DHS have been consolidated, and the federal government has a new interagency coordination mechanism in the WMDSG that can seamlessly integrate crisis management and CM planning and coordination, the nation is better prepared to meet the challenges and competing interests that could arise if a terrorist were to threaten to use a WMD. To fully reap these benefits, the law enforcement and CM communities at all levels of government need to plan, train, and exercise the left of boom scenario of a terrorist threatening to use a WMD. Only then will the nation maximize its ability to lean forward to stop the terrorist, while simultaneously maximizing its ability to save lives and mitigate the damage to property.

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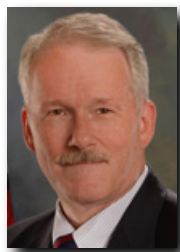
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The New Age of Police Reform – Part 3

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 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.

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.

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:

[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](#)

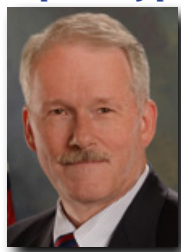
[Part 4 – National Police Reform: Intergovernmental Friction & Cohesion](#)

As founder and president of Direct Action Resilience LLC, Joseph Trindal 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 the U.S. Department of Justice, International Criminal Justice Training and Assistance Program (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 Federal Protective Service for the National Capital Region. He serves on the Partnership Advisory Council at the International Association of Directors of Law Enforcement Standards and Training (IADLEST). He also serves on the International Association of Chiefs of Police, International Managers of Police Academy and College Training. He was on faculty as an instructor at George Washington University. He is past president of the InfraGard National Capital Region Members Alliance. He has published numerous articles, academic papers, and technical counter-terrorism training programs. He has two sons on active duty in the U.S. Navy. Himself 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.

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](#)

As founder and president of Direct Action Resilience LLC, Joseph Trindal 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 the U.S. Department of Justice, International Criminal Justice Training and Assistance Program (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 Federal Protective Service for the National Capital Region. He serves on the Partnership Advisory Council at the International Association of Directors of Law Enforcement Standards and Training (IADLEST). He also serves on the International Association of Chiefs of Police, International Managers of Police Academy and College Training. He was on faculty as an instructor at George Washington University. He is past president of the InfraGard National Capital Region Members Alliance. He has published numerous articles, academic papers, and technical counter-terrorism training programs. He has two sons on active duty in the U.S. Navy. Himself 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.

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